



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 18-00162
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

07/19/2019

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. The evidence is not sufficient to mitigate his history of financial problems, which is ongoing. He has not taken any substantial affirmative action to resolve more than \$20,000 in delinquent debt. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, on September 1, 2016. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on January 26, 2018, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified

information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR on February 19, 2018. He admitted the nine delinquent debts alleged in the SOR. He also requested a hearing before an administrative judge. In addition, he provided a brief explanation that he was currently working on repaying his overdue creditors by paying off the smallest debt first and then moving to the next, and he stated that he would present proof of payment at the hearing.

The case was assigned to another judge on May 15, 2018, and then reassigned to me on May 22, 2018. The hearing took place as scheduled on September 19, 2018. Applicant appeared without counsel. Both Department Counsel and Applicant offered documentary exhibits, which were admitted as Exhibits 1-5 and A, respectively. Applicant relied on his own testimony and called no other witnesses. The hearing transcript (Tr.) was received on September 26, 2018.

Findings of Fact

Applicant is a 35-year-old employee who is seeking to retain a security clearance at a higher level than previously granted to him in 2008. (Tr. 7) He is employed as a system administrator for a company in the defense industry. He has been so employed since November 2015; he transferred to his current location in July 2016. He was initially hired at an annual salary of \$65,000; he received a promotion when he transferred to his current location; and his current annual salary is \$78,000. He works in direct support of a military organization located on a military installation. His formal education includes an associate's degree from a technical institute awarded in 2004. He has never married, but he and his longtime fiancée have a ten-year-old child.

Applicant's employment history includes three periods of unemployment during 2012-2015. (Exhibit 1) He worked as an assistant systems administrator from May 2008 to August 2012, when he was laid off. He was out work for about two months. (Tr. 25) He accepted a job as a systems administrator in support of a contract that required him to live and work in Afghanistan. He worked overseas until about May 2014 when the contract ended. He was then out of work for about three months, from May 2014 to August 2014. During that time, he enjoyed spending time with his family, including two trips to Hawaii to visit family. He returned to work as a system administrator in August 2014 and had that job until September 2015, when he was laid off. He was then out of work for about two months, from September 2015 to November 2015, when he began working for his current employer. Other than those three periods, Applicant has had full-time employment in his field since at least June 2006.

The SOR concerns a history of financial problems consisting of nine delinquent accounts, in collection or charged off, in amounts ranging from \$88 to \$10,593 for a total of about \$21,674. The two largest debts, for \$10,593 and \$6,158, stem from automobile loans that ended in repossession resulting in deficiency balances. None of the nine delinquent debts are medical collection accounts. Applicant admitted all the SOR

allegations in his answer to the SOR and during his hearing testimony. In addition, the delinquent debts are established by credit reports from 2016, 2017, and 2018. (Exhibits 2-5). None of the nine delinquent debts were paid, settled, entered into a repayment arrangement, forgiven, cancelled, or otherwise resolved. (Tr. 31)

Overall, Applicant attributed his financial problems or difficulties to unemployment and the expenses associated with providing for his fiancée and young child. He accepted the job in Afghanistan, where he earned more than \$100,000 annually, not including a substantial bonus, in order to focus on reducing his student loan debt. (Tr. 25, 35-36) He stated that he reduced the balance from about \$40,000 to \$11,000. (Tr. 35) The most recent credit report from September 2018 shows a balance of \$19,818 with \$0 past due. (Exhibit 5) Applicant described his current financial situation as living paycheck to paycheck. (Tr. 44) He estimated a checking account balance of \$1,000 and a savings account balance of \$0. (Tr. 37-38) The September 2018 credit report shows a new collection account for \$680 stemming from an apartment lease. (Exhibit 5; Tr. 36-37)

In September 2018, a few days before the hearing in this case, Applicant retained the services of a firm that specializes in credit repair and optimization. (Exhibit A; Tr. 27-29) He pays a monthly fee of \$100 for the service. His goal is to restore his credit to good standards.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.¹ As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”² Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.³ The Appeal Board has

¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

² 484 U.S. at 531.

³ 484 U.S. at 531.

followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁵ Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁶

Discussion

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is set forth in AG ¶ 18 as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce, or

⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁶ Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15.

separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The evidence supports a conclusion that Applicant has a history of financial problems that is sufficient to raise a security concern under Guideline F. The disqualifying conditions noted above apply to this case.

Applicant is in a difficult situation dealing with a large amount of indebtedness with a number of creditors or collectors. His problematic financial history is traceable to three relatively brief periods of unemployment during 2012-2015. One of those periods also served as rest and recreation after returning from his job in Afghanistan. The job layoffs and periods of unemployment were circumstances largely beyond his control. He used the additional income he earned working in Afghanistan during 2012-2014 to attack the large balance on his student loan, which was not unreasonable.

Nevertheless, what is missing here is obvious; namely, Applicant failed to take any substantial affirmative action (“a good-faith effort”) to resolve the nine delinquent debts for more than \$20,000 in the SOR. Not even the smallest collection account for \$88 was paid. This lack of action occurred despite his full-time employment since November 2015, and earning a decent income ranging from \$65,000 to \$78,000 at present. His action in September 2018 in retaining a credit-repair firm cannot be considered a good-faith effort at this time. It is an initial step in the right direction, but it is too soon to tell if it will result in either a large or small reduction of his indebtedness. Given the totality of facts and circumstances, the evidence is not sufficient to mitigate the security concern stemming from his long-standing history of financial problems, which is ongoing and likely to continue for the foreseeable future.

Following *Egan* and the clearly consistent standard, I have doubts about Applicant’s reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. I conclude that he has not met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a -- 1.i:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility denied.

Michael H. Leonard
Administrative Judge