



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



In the matter of:)
)
-----) ISCR Case No. 18-00194
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

08/29/2019

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. The conditions that resulted in his financial problems were largely beyond his control, and he acted responsibly under the circumstances. He has also initiated and is adhering to a good-faith effort to repay his delinquent debts. The evidence is sufficient to mitigate his history of financial problems. Accordingly, this case is decided for 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 May 1, 2016. (Exhibit 2) This document is commonly known as a security clearance application. Thereafter, on March 22, 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.

With assistance of counsel, Applicant answered the SOR on April 30, 2018. Although his formal responses were “admit in part and deny in part,” he essentially admitted the six debts alleged and provided explanations and current information. His answer consisted of a seven-page memorandum along with proposed Exhibits A-R. He requested a hearing before an administrative judge.

The case was assigned to me on September 24, 2018. The hearing took place on December 4, 2018. Applicant appeared with counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-8. Applicant offered documentary exhibits, which were admitted as Exhibits A-X. Other than Applicant, no witnesses were called. The hearing transcript (Tr.) was received on December 12, 2018.

The record was kept open until December 14, 2018, to provide Applicant an opportunity to submit additional documentation in support of his case. Applicant made a timely submission, and the three additional documents are admitted without objections as Exhibits Y, Z, and AA.

Findings of Fact

Applicant is a 52-year-old employee who is seeking to retain a security clearance. He works as a consultant in the fields of proposal management, capture management, and business development for various companies in the defense industry. (Tr. 18-19; Exhibit C) His formal education includes a bachelor’s degree from a prestigious private university. He married in 1999, and he and his spouse have two teenage children from the marriage.

The SOR alleged and Applicant admitted a history of financial problems. In addition to his admissions, the six delinquent financial accounts in the SOR are established by the documentary evidence. (Exhibits 3-8) In particular, the SOR concerns a past-due mortgage loan in the amount of \$3,890 with a total balance of \$948,215, and five charged-off accounts in the total amount of about \$64,433. Three of the charged-off accounts are credit card accounts, and two charged-off accounts are unsecured loans from peer-to-peer lending companies.

In general, Applicant attributed his financial problems to circumstances surrounding his wife’s mental-health condition (bipolar disorder) in 2016, and a business downturn in 2017 due to the transition of presidential administrations, leaving delays in large government procurement programs. His wife’s mental-health condition is long-standing; the first undiagnosed manic episode occurred in 2007-2008; and she was first diagnosed with bipolar disorder and had court-ordered treatment in 2011. (Tr. 53-54) Her most recent manic episode was in 2016. Her condition has stabilized since the last episode with no further incidents, and she remains under the care of a psychiatrist. (Tr. 43-44)

The 2016 episode resulted in, among other things, Applicant and his wife entering into a written partial marital settlement agreement in April 2016. (Exhibit AA) The agreement summarized the relevant circumstances surrounding his wife's mental-health condition as follows:

WHEREAS, the Wife has been hospitalized several times during the parties' marriage which has resulted in periods of marital separation, and it appears that in order for the parties to continue their marriage and to continue to reside in the same residence and to protect the safety of the children, the parties have agreed that a marital agreement is necessary for them to live together as husband and wife. Specifically, [Applicant's spouse] suffers from significant mental illness. To date, she has been hospitalized (involuntarily and/or voluntarily) four (4) times since 2011. This includes four (4) court supervised hospitalizations and multiple court supervised medical treatment plans. Manic attacks preceded each of these hospitalizations, and local law enforcement/crisis prevention authorities deemed her to be a possible danger to herself or others. In two (2) of these hospitalizations, different medical teams have diagnosed her as having Bi-polar disorder with manic tendencies.

As part of the mania process, [Applicant's spouse] has damaged/attempted to destroy personal property belonging to her family. For example, in 2011, she destroyed office equipment used by her husband and attempted to give away family possessions (including valuable jewelry). And in 2013, she locked out her husband and children from their family home during another manic attack. Also, on or about in 2008/2009, she also locked out her husband from the family home until local law enforcement were able to gain access to the house for the husband.

During manic attacks, [Applicant's spouse] has shown disregard for the safety of family financial assets. For example, in 2011 she wrote a check for \$100,000 on the family account which if cashed would have bounced. In 2011, she also tried to give away assets of the family to realize a delusional vision of good fortune. And in 2013, she emptied out joint bank accounts, which created a dangerous situation for the husband and children who were at that point outside the home area. (Exhibit AA at 1-2)

Among other things, Applicant and his wife agreed that he has sole legal and physical custody of their minor children and his wife had liberal access to the children so long as she remains in the marital home. His wife agreed to continue treatment, follow all doctor's recommendations, and take all prescribed medications. She also agreed to have no further contact with a named paramour or any subsequent paramour and cease all contact, direct or indirect, with such persons. Applicant and his wife also agreed that they will have one joint checking or savings account with a particular bank and all other joint accounts will be closed.

Irresponsible spending was a feature of Applicant's wife's manic episodes. The indebtedness reflected in the five charged-off accounts in the SOR stems from her irresponsible spending with three credit card accounts, spending to pay for medical care and treatment for her, or both. Applicant has taken steps to reduce the likelihood of recurrence of a similar event. (Tr. 46-47) To address the irresponsible spending, Applicant and his wife have one joint account, which allows him to monitor ongoing cash flow, and he has taken her off of all his business accounts. (Tr. 48-50) Together, they have three bank accounts with the same bank; she has her own checking account; they have a joint account; and he has an account for household expenses. (Tr. 50) Most of the money is in the household account, which she does not have access to while he has access and transparency for all three accounts. (Tr. 50-51) In addition to the financial accounts, his spouse does not have access to matters related to his work in the defense industry. (Tr. 63-64)

Turning to the delinquent debts in the SOR, the first concerns the past-due mortgage loan for a home in their state of current residence. Applicant fell behind on the loan due to a tenant defaulting on his rental obligation while Applicant and his family were living and working in another state during 2014-2017. (Tr. 25-32) The tenant made two payments on a 24-month lease before defaulting and eventual eviction. In addition to the lack of a monthly rental payment, which was used to cover the mortgage payment, the tenant damaged the property to an extent that the cost to repair and rehabilitate the home was about \$40,000.

In April 2018, Applicant entered into a repayment plan agreement for the mortgage loan, which then was past due in the amount of \$12,028, with a payment schedule calling for six monthly payments ending in September 2018. (Exhibit M)

In October 2018, the mortgage lender agreed to extend the plan for another six months ending in March 2019. (Exhibit W) As of October 2018, the past-due amount was \$5,376.

A November 16, 2018 account statement reflects the following: (1) the amount due on December 1, 2018, was \$16,043; (2) the unpaid principal balance was \$905,116; (3) past payments year-to-date include \$12,994 in principal, \$13,685 in interest, \$9,174 in escrow, and \$2,668 in unapplied funds, for a total of \$38,552; and (4) the current amount due consisted of \$1,463 in principal, \$1,501 in interest, \$1,127 in escrow for a monthly payment of \$4,092, plus a past-due amount of \$11,951. (Exhibit Z)

A December 8, 2018 account statement shows an unpaid principal balance of \$903,661 with a past-due balance of \$12,059. (Exhibit Y) Applicant anticipates the mortgage loan will be current by approximately March 2019. (Tr. 31)

Turning next to the charged-off accounts, the \$23,957 charged-off credit card account was settled in 2017, when Applicant agreed to make two payments totaling \$13,954, and a pending collection lawsuit against Applicant was dismissed with prejudice in early 2018. (Tr. 32-36; Exhibit N)

The \$17,051 charged-off credit card account was settled in 2017, when Applicant agreed to make 12 monthly payments of \$1,222 ending in October 2018 for a full settlement amount of \$14,675. (Tr. 36-37; Exhibits O and U)

The \$13,323 charged-off unsecured loan was settled in 2018, when Applicant agreed to make three payments for a total of \$4,000 ending in May 2018. (Tr. 38-39; Exhibit P)

The \$8,866 charged-off unsecured loan was resolved by a repayment arrangement calling for \$100 monthly payments beginning in October 2017. (Tr. 39-41; Exhibits Q and V) The account has not been settled for a lesser amount, and Applicant intends to adhere to the payment arrangement until the account is paid.

The \$1,236 charged-off credit card account was settled in November 2017 for a lump-sum payment of \$1,512, and a pending collection lawsuit against Applicant was dismissed with prejudice in early 2018. (Tr. 37-38; Exhibit R)

Applicant is a high-earner, averaging about \$20,000 monthly in billable revenue. (Tr. 42) A self-prepared financial statement shows the following: (1) monthly income of \$15,000; (2) monthly expenses of \$8,090; (3) monthly debt payments of \$3,332; and (4) a monthly net remainder of \$3,578; and listed assets (excluding real estate) of \$263,000. (Exhibits K and S) In addressing his indebtedness to recover from the 2016 incident, Applicant has followed a four-step plan: (1) relocating to their current home and state of residence in mid-2017, which resulted in a reduced cost-of-living; (2) focusing on the key accounts to obtain settlements; (3) establishing a three-month financial reserve, which is still a work in progress; and (4) paying off their current debt by the spring of 2020, all of which would result in a full recovery. (Tr. 41-42) In addition to the above matters, Applicant had credit counseling from a consumer credit counseling organization in April 2018. (Exhibit J)

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

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).

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 DOHA Appeal Board has 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:

² 484 U.S. at 531.

³ 484 U.S. at 531.

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.

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 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.

Turning to the matters in mitigation, Applicant's financial problems are due to a combination of factors: (1) his wife's last manic episode in 2016, her related irresponsible spending, and expenses for her care and treatment; (2) the business downturn in 2017; and (3) the tenant who defaulted on the lease and damaged their home while they were living and working in another state. Those circumstances were largely beyond his control. Applicant acted responsibly under the circumstances, as evidenced by the remedial actions taken in 2017 and 2018 to address his indebtedness. He also acted responsibly by taking steps to rehabilitate his marriage and care for his spouse, protect his minor children, and prevent his spouse from engaging in further irresponsible spending. Given the circumstances, the mitigating condition at AG ¶ 20(b) applies in Applicant's favor.

Applicant has initiated and is adhering to a good-faith effort to resolve his indebtedness. He receives substantial credit for addressing all the debts in the SOR. The past-due mortgage loan is still past due, but Applicant has paid tens of thousands of dollars on the loan during 2017-2018, and he anticipates being current on the loan by March 2019. He also paid a total of \$34,141 to settle four of the five charged-off accounts, and he is making monthly payments per a repayment arrangement for the other. Moreover, it does not appear that Applicant was slow to act. He has been working on these matters since the mid-2017 relocation to his state of current residence. Given the circumstances, the mitigating condition at AG ¶ 20(d) applies in Applicant's favor.

Applicant presented a good but less than perfect case in mitigation, but, as in all human affairs, perfection is not the standard. A security clearance case is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement

that an applicant make payments on all the delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Here, I am persuaded that Applicant is making an honest effort to be financially responsible and repay his creditors. He's not running from or avoiding his debts. There are clear indications that he is repaying his creditors, and his financial problems appear to be under control. With additional time coupled with his ability as a high-earner, it is probable that he will continue to make the required mortgage loan payments and adhere to the repayment arrangement for the unresolved charged-off account. It is also probable that he will meet his financial goal of full recovery by spring 2020. Taking everything into account, Applicant demonstrated good judgment, reliability, and trustworthiness by persevering under difficult and trying circumstances that were largely beyond his control. The financial considerations concern is mitigated.

Following *Egan* and the clearly consistent standard, I have no 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 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:	For Applicant
Subparagraphs 1.a--1.f:	For Applicant

Conclusion

It is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility granted.

Michael H. Leonard
Administrative Judge