



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



In the matter of:)
)
-----) ISCR Case No. 18-00334
)
Applicant for Security Clearance)

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

06/21/2019

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. He did not provide sufficient evidence to mitigate his history of financial problems. 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 August 4, 2017. This document is commonly known as a security clearance application. Thereafter, on March 9, 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 April 10, 2018. He admitted all but one of the allegations, and he provided some brief explanations. He also requested an in-person hearing before an administrative judge.

The case was assigned to another judge on August 9, 2018, and then reassigned to me on October 22, 2018. The hearing took place as scheduled on October 25, 2018. Applicant appeared without counsel. Both Department Counsel and Applicant offered documentary exhibits, which were admitted as Exhibits 1-4 and A-H, respectively. No witnesses other than Applicant were called.

The record was kept open until November 25, 2018, to allow Applicant an opportunity to provide additional documentary evidence. He made a timely submission, and the post-hearing matters (tax records from the IRS) are admitted without objections as Exhibits I-K.

Ruling on Procedure

At the close of evidence, Department Counsel moved to amend the SOR by adding two allegations concerning Applicant's failure to timely file state and federal income tax returns for tax years 2011 through 2015 as well as failure to timely pay federal income tax as required for those tax years. (Tr. 73-77) Applicant objected because he did not have documentation concerning the federal tax matters. I overruled the objection, but granted Applicant an additional 30 days, until November 25, 2018, to provide relevant documentation. Accordingly, the SOR was amended by adding the following:

SOR ¶ 1.m—You failed to timely file state income tax returns for tax years 2011 through 2015; and

SOR ¶ 1.n—You failed to timely file federal income tax returns for tax years 2011 through 2015, and you failed to timely pay federal income tax when due for those tax years.

Findings of Fact

Applicant is a 33-year-old employee who is seeking to obtain a security clearance. He is employed as a transportation operations specialist. He has been so employed since March 2016. His formal education includes a bachelor's degree in business administration awarded in 2008. He has never married and has no children.

Applicant's employment history includes three periods of unemployment since 2011. He was laid off from a job in February 2011 and unemployed until about June 2011. He then had a part-time job as an office assistant from June 2011 to November 2011, when he departed because it was a temporary job. He was unemployed from November 2011 to February 2012. He then had another part-time job as a museum guide from February 2012 to November 2015, when he was terminated or fired. He was unemployed from November 2015 to March 2016, when he began his current job. He

received unemployment compensation during all three periods of unemployment. He estimated that it amounted to 60% less than the income he earned.

The SOR, as amended, concerns a history of financial problems consisting of the following: (1) six delinquent student loan accounts placed for collection or charged off for a total of approximately \$62,000; (2) five consumer accounts placed for collection or charged off for a total of approximately \$5,172; (3) back taxes owed to a state tax authority for tax years 2011 and 2012 in the amount of approximately \$2,704, as well as failure to timely file state income tax returns for tax years 2011 through 2015; and (4) failure to timely file federal income tax returns for tax years 2011 through 2015, as well as failure to timely pay federal income tax when due for those tax years. Applicant admitted to all the SOR allegations in his answer to the SOR or during his hearing testimony. Additional evidence establishing the SOR allegations is found in the documentary evidence.

Overall, Applicant attributed his history of financial problems to the unexpected circumstances that occurred in 2011, the three periods of unemployment, and the two part-time jobs he had before returning to full-time employment in 2016. The unexpected circumstances in 2011 consisted of an incident where he was stabbed in the back (resulting in only minor injuries) while in a bar, and injuries sustained in two car accidents resulting in a strained neck and a bruised spine. (Tr. 39-41).

The six delinquent student loans are now held by two different entities. Applicant obtained the loans while earning his bachelor's degree from August 2003 to May 2008. Three accounts, with a total balance due of \$56,919 as of July 2018, are held by a debt-collection company contracted by the current creditor. (Exhibit B) The debt-collection company offered Applicant the opportunity to enter into a repayment plan with a reduced interest rate in August 2017 as well as a lump-sum settlement offer of \$5,490 in July 2018, but he was unable to accept either offer. He attempted to obtain a loan so he could accept the lump-sum offer, but he was unable to do so. (Tr. 69-71)

The other three student loans, which were obtained from the Department of Education, are now in a repayment arrangement. (Exhibits C and D). Initially, Applicant was required to make a series of payments to rehabilitate the loans, completed in June 2018, which qualified his accounts for transfer to one of the Department of Education's loan servicers. A loan transfer of \$7,727, with a principal balance of \$6,964, was made in June 2018. Applicant made payments in July, August, September, and October 2018.

Concerning the five delinquent consumer accounts, one is repaid, three are in a repayment arrangement, and one is unresolved. Applicant paid the \$1,387 collection account, stemming from a mobile-phone account, in full in September 2018. (Exhibit F) He is using the services of a consumer-credit-counseling firm to repay three accounts. (Exhibit E) The arrangement began in April 2018, and he made monthly payments of \$108 in April, May, June, July, August, and October 2018. Applicant denied the \$346 collection account in his answer to the SOR, but he acknowledged in his hearing testimony that the debt was his and stemmed from automobile insurance. (Tr. 57-60) He

further explained that he contacted the debt-collection company, they had no record of the account and advised him to dispute the account, which he said he is doing.

Applicant fell behind on his state and federal income tax obligations during his period of unemployment and underemployment during 2011 through 2015. He altered his tax withholding to maximize his income during that period. He did not file tax returns because he knew he would owe money he could not then afford to pay. Applicant filed all the past-due state and federal income tax returns in January 2017, along with his returns for tax year 2016. He also entered into repayment arrangements with both the state tax authority and the IRS.

Concerning the state, he reached a payment agreement in April 2018 on a balance of \$2,773 for tax years 2011, 2012, and 2016. (Exhibits G and H) He agreed to make \$200 monthly payments and has done so through October 2018. He estimated owing about \$1,000. (Tr. 36)

Concerning the IRS, he entered into an installment agreement in August 2017 for tax years 2011, 2012, 2014, 2015, and 2016. (Exhibit I). He agreed to make \$200 monthly payments beginning on September 15, 2017. He made seven monthly payments, for a total of \$1,400, from October 2017 to June 2018. (Exhibit J). Those payments reduced the balance to \$2,788 from \$4,379 as of July 2018. The most recent account statement from November 2018 shows he owes \$2,982 for balances due for tax years 2012 and 2017. (Exhibit K)

Applicant stated that he earned an annual salary of about \$59,000. He further stated that he had no money in the bank or other financial institution, although he was participating in his employer's 401(k) retirement plan. He does not use a credit card and manages his finances with a debit card connected to his checking account.

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

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.

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 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;

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(f) failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required;

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;

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

AG ¶ 20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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 where he is dealing with a large amount of indebtedness with a number of creditors or collectors. His problematic financial history is traceable to unexpected circumstances in 2011 when he was injured in two car accidents, and he then began a years-long period of periodic unemployment and part-time employment, which only ended in March 2016 when he began his current job. Since then, he's done a decent job addressing a number of the delinquent debts. Three of the student loans were rehabilitated and are now in a repayment arrangement. He paid off one of the consumer debts and placed three accounts in a repayment arrangement. He also filed all the past-due state and federal income tax returns in January 2017 (before the SOR was issued), and he reduced the balances owed for back taxes via repayment arrangements with the state and federal tax authorities.

Unfortunately, the largest delinquent debts, the three student loans for more than \$50,000, remain wholly unresolved. That is a sizeable amount of money. Moreover, I consider nonpayment of student loans a serious matter, akin to nonpayment of income tax or court-ordered child support. Applicant has neither a realistic plan nor the means to address the loans. I have credited Applicant for circumstances largely beyond his control, and note that he has made progress in repaying debt and fixing his tax problems. Nevertheless, the evidence is not sufficient to fully 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.n:	Against Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge