

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 5, 2018. He provided handwritten responses on the SOR and he provided a one-page memorandum in explanation. In addition, he provided a more complete answer on April 19, 2018, when he provided a two-page memorandum in which he addressed each allegation and provided an explanation. His answers to the SOR allegations were mixed, with admissions and denials. He also requested a hearing before an administrative judge.

The case was assigned to another judge on May 16, 2018, and then reassigned to me on May 22, 2018. The hearing took place as scheduled on September 18, 2018. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-7. Applicant did not offer any documentary exhibits, he called no witnesses, and he relied on his own testimony. The hearing transcript (Tr.) was received on September 25, 2018.

Ruling on Procedure

The SOR was amended to correct a minor error concerning Applicant's name in the case caption, which mistakenly stated he was a senior (Sr.) when he is not. (Tr. 26)

Findings of Fact

Applicant is a 53-year-old employee who is seeking to obtain a security clearance for the first time in the defense industry. He is employed as a custodian for a company in the defense industry. He has been so employed since July 2016. He was initially hired at an hourly rate of \$11.10; he was promoted to manufacturing technician at an hourly rate of \$15.78 in September 2017; and he was returned to the custodian position at an hourly rate of \$14.30 when his interim security clearance was withdrawn in connection with issuance of the SOR. His formal education consists of a high school diploma. He has never married, but he has had an on-again, off-again cohabitant since 1988. (Tr. 27) They share two children who are now young adults in their 20s.

Applicant's employment history includes a two-year period of unemployment from February 2011 to February 2013. In his security clearance application he stated that he was fired from a job as a field technician due to "personal reasons." (Exhibit 1) At the hearing, he stated that he was fired after testing positive for marijuana, stating that "I got laid off for being dirty on marijuana." (Tr. 42-44) He received unemployment compensation during that period. (Tr. 44) Otherwise, Applicant has had full-time employment since at least 1992.

The SOR concerns a history of financial problems consisting of 13 delinquent accounts ranging from \$114 to \$7,564 for a total of about \$13,291. The accounts include seven collection accounts, three medical collection accounts, one charged-off account, one unpaid judgment, and one 120-day past-due account. Three of the seven collection accounts are for utility accounts. The two largest debts, for \$7,564 and

\$2,342, stem from rental leases. In addition to his admissions in his answers to the SOR, the delinquent debts are established by credit reports from 2017 and 2018. (Exhibits 4, 5, 6, and 7). Applicant did not present any reliable documentation to establish that any of 13 delinquent debts were paid, settled, in a repayment arrangement, in dispute, forgiven, cancelled, or otherwise resolved. I find that all 13 delinquent accounts in the SOR are unresolved.

In addition to the indebtedness in the SOR, Applicant’s financial history includes a Chapter 7 bankruptcy case that ended in discharge in July 2012. (Exhibit 2) The bankruptcy records show that the court granted a discharge for \$11,291 in unsecured nonpriority claims based on 18 debts, many of which were collection accounts. The bankruptcy was a byproduct of Applicant’s job termination and period of unemployment. (Tr. 28)

Overall, Applicant described his current financial situation as “a little bleak.” (Tr. 45) He has both a checking account and a savings account, but he had negative balances at the time. (Tr. 45-47) He was also incurring overdraft charges, “quite bit lately.” (Tr. 47-48) In addition, the most recent credit report from September 2018 listed two new collections accounts for \$456 and \$761. (Exhibit 7; Tr. 38-39).

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

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.

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

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 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.

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

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

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's problematic financial history is likely traceable to his two-year-period of unemployment during 2011-2013, which is now several years ago, and low-income jobs. Because he was fired for misconduct, by testing positive for marijuana, the resulting period of unemployment was not a circumstance largely beyond his control. In addition, what is missing here is obvious; namely, Applicant failed to take any substantial affirmative action ("a good-faith effort") to resolve the 13 delinquent accounts for more than \$13,000 in the SOR. Not even the smallest collection account for \$114 was paid. 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. Stated simply, I am not persuaded that Applicant is truly committed to a path of financial responsibility.

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.m:	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