



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



In the matter of:)
)
-----) ISCR Case No. 18-01478
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

07/29/2019

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. The evidence is not sufficient to mitigate his history of financial problems. He has not made a good-faith effort to resolve more than \$50,000 in delinquent debt. He also failed to timely file state and federal tax returns in recent tax years. 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 February 9, 2017. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on June 8, 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 July 21, 2017. He provided handwritten responses on the SOR in which he admitted all the SOR allegations. Neither Applicant nor Department Counsel requested a hearing, but the case was inadvertently processed for a hearing. This error was discovered during the June 2019 hearing, and Applicant stated he wanted to proceed with a hearing. (Tr. 12-15).

The case was assigned to me on September 24, 2018. Applicant failed to appear for a hearing scheduled for December 3, 2018. Upon due consideration, I granted Applicant's e-mail request to grant him an extension of time so he could pursue retaining an attorney to represent him. The hearing took place as rescheduled on June 12, 2019. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-6. Applicant offered documentary exhibits, which were admitted as Exhibits A (a June 6, 2019 biweekly pay statement) and B (a June 2019 credit report). Other than Applicant, no witnesses were called. The hearing transcript (Tr.) was received on June 25, 2019.

Rulings on Procedure

At the close of the evidence, Department Counsel moved to amend SOR ¶¶ 1.r and 1.s, so as to render those allegations in conformity with the evidence admitted. (Tr. 58-62). I granted the motion on SOR ¶ 1.r, by adding tax years 2016, 2017, and 2018 to the allegation that Applicant failed to timely file a state income tax return in 2014. The basis for the amendment was Applicant's unequivocal and certain statements that he had not filed a state income tax return since moving to his current state of residence in 2016. I denied the motion on SOR ¶ 1.s, to include additional tax years to the allegation that Applicant failed to timely file a federal income tax return in 2014. Denial was appropriate because Applicant's hearing testimony, which was the basis for the amendment, was too uncertain and conflicting to rely on.

Findings of Fact

Applicant is a 45-year-old employee who is seeking to obtain a security clearance for the first time. He is employed as a material program manager in the field of supply-chain management for a company in the defense industry. He has been so employed since July 2016. His biweekly base pay is \$3,401, or an annual salary of about \$81,624. (Exhibit A) He relocated to his current state of residence in mid-2016. He attended college for many years, apparently on a part-time basis, during 1992-2001. He was awarded a bachelor's degree in 1999. He married in 2001 and divorced in 2005. He has one child from the marriage. He has another child from a previous relationship. He pays child support on an informal basis or agreement without the benefit of a court order or written agreement.

Applicant had a full-time job as a procurement agent for a large aerospace company from June 2002 to November 2014, when he was laid off due to a reduction in

force. As a result, he received an unspecified amount of severance pay. He was then unemployed or under employed until he began his current job in July 2016. He was out of work from December 2014 to May 2015. He worked as a consultant from May 2015 to April 2016, and was unemployed from May 2016 to July 2016. During the period of unemployment in 2015, he cashed out a 401(k) account from his previous employer, which withheld the tax due and the 10% penalty.

The SOR concerns a history of financial problems consisting of failure to timely file state and federal tax returns and 17 delinquent accounts, either charged off or in collection, for about \$69,341 in total. Twelve of the delinquent accounts are student loans for about \$49,658 in total, which Applicant used to attend college during 1999-2001. The other five delinquent accounts are credit card accounts from major banks. Four of these accounts were reduced to judgment, by default, as reflected in county court records from 2017 and 2018. (Exhibit 2) Department Counsel agreed that the \$5,000 unpaid judgment in SOR ¶ 1.t was a duplication of the debts in SOR ¶¶ 1.c or 1.f. In addition to his admissions, the delinquent accounts are established by the documentary evidence (Exhibits 2-6). In both his answer to the SOR and in his hearing testimony, he attributed his financial problems to his 2014 job layoff and the resulting period of unemployment and under employment.

Applicant has made some progress in repaying the delinquent credit card accounts. The \$6,144 charge-off account in SOR ¶ 1.c was reduced to judgment and paid off through wage garnishment with a date of last payment in November 2018. (Tr. 33, 38-41; Exhibit B at 11) Likewise, the \$4,489 charged-off account in SOR ¶ 1.f was reduced to judgment and is being repaid through wage garnishment at the rate of \$335 per pay period, with \$1,005 paid to date. (Tr. 33-34, 39-40; Exhibit A) For the other three delinquent credit card accounts, two of which were reduced to judgment, Applicant stated that he is attempting to negotiate a payment arrangement with the creditors. (Tr. 34-35, 41-43) In addition to the wage garnishments, Applicant has two loans against his current 401(k) account. (Exhibit A; Tr. 53-54)

Concerning the delinquent student loans, Applicant is currently paying \$436 per pay period on those accounts, although he was uncertain if the payment was being made directly to the Department of Education or a collection firm. (Tr. 32-33; Exhibit A) He did not present a current account statement for the student loans. (Tr. 33) He estimated the current balance on the student loan accounts is about \$50,000. (Tr. 55) The student loan accounts were also reduced to a judgment, which is being paid through wage garnishment. (Tr. 43-44; Exhibit A)

Turning to the tax matters, Applicant admitted failure to timely file an income tax return for tax year 2014 in his state of previous residence. (Tr. 36-37) He also admitted failure to timely file income tax returns for tax years 2016, 2017, and 2018 in his state of residence since 2016. (Tr. 51-52) And he admitted failure to timely file a federal income tax return for tax year 2014. (Tr. 36-37) To date, neither the state nor federal returns have been filed. He did not present any documentation from the state tax authorities or the IRS. He admitted that his failure to timely file returns was due to oversight and failure on his part. (Tr. 44) In light of the wage garnishments, he admitted reducing his

tax withholdings to pay less tax and receive more income, which has resulted in having tax due when returns were required to be filed. (Tr. 44-46)

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

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

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).

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

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

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 ¶ 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(c) 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.

Turning to the matters in mitigation, it appears the genesis of Applicant's financial problems was the November 2014 job layoff. That event resulted in a nearly two-year period of unemployment and underemployment, which would be a difficult setback for

anyone. Still, Applicant received severance pay, cashed out a 401(k) account, and had some earned income during this period, so he was not completely without funds. Further, his unemployment and under employment did not prevent him from timely filing state and federal income tax returns. Given these circumstances, the mitigating condition at AG ¶ 20(c) applies, but only in part, and Applicant receives limited credit in mitigation.

Concerning the delinquent student loan and credit card accounts for more than \$60,000, Applicant has not made “a good-faith effort” to resolve those matters. Although one of the charged-off card accounts was repaid and another is being repaid, that occurred due to wage garnishments to enforce money judgments, not voluntary payment plans arranged by Applicant. The same goes for the payments on the student loan accounts, which were reduced to a judgment and are being repaid through a wage garnishment. Given these circumstances, the mitigating condition at AG ¶ 20(d) does not apply.

Applicant has not made any progress in resolving the tax matters. The state and federal tax returns for tax year 2014 remain unfiled. What is more, Applicant has not gotten around to filing a state income tax return since relocating to his current state of residence in 2016. He presented no documentation from the state and federal tax authorities. He is a long way from being in compliance with state and federal tax authorities. Given these circumstances, the mitigating condition at AG ¶ 20(g) does not apply.

Following *Egan* and the clearly consistent standard, I have doubts and concerns 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.s:	Against Applicant
Subparagraph 1.t:	For 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