



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



In the matter of:)
)
-----) ISCR Case No. 18-01965
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoain, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq., and Alan V. Edmunds, Esq.

09/12/2019

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. The evidence shows a long-standing pattern of financial problems, which are largely unresolved and ongoing. The evidence is not sufficient 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 January 21, 2016. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on August 15, 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 October 18, 2018. He admitted, with explanations, seven of the eight factual allegations in the SOR. His answer consisted of a seven-page memorandum along with proposed Exhibits A-G. He requested a hearing before an administrative judge.

The case was assigned to me on April 16, 2019. The hearing took place as scheduled on June 11, 2019. Applicant appeared with counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-7. Applicant offered documentary exhibits, which were admitted as Exhibits A-Q. Other than Applicant, no witnesses were called. The hearing transcript (Tr.) was received on June 20, 2019.

The record was kept open until July 11, 2019, to provide Applicant an opportunity to submit additional documentation. At Applicant's request, the deadline was extended to August 12, 2019, and then extended again to August 21, 2019. On August 19, 2019, Applicant's counsel requested, by e-mail, that I close the record. In other words, Applicant did not submit any post-hearing matters.

Findings of Fact

Applicant is seeking to obtain a security clearance, although he has held a security clearance in the past. (Tr. 5-6) He works as a principal systems engineer for a large company in the defense industry. He has been so employed since October 2017. His formal education includes a bachelor's degree in mechanical engineering awarded in 1997, and a master's degree in systems engineering awarded in 2011. He is 51, married, and has a 19-year-old stepdaughter.

As reflected in his security clearance application, Applicant's employment history is a bit irregular, in that he has held multiple jobs in several locations over the last decade. (Exhibit 1) Since completion of his master's degree in 2011, he has had three periods of unemployment: (1) from April 2012 to September 2012, a period of about six months; (2) from December 2012 to March 2013, when he decided to take some time off after his father passed away in November 2012; and (3) from February 2017 until October 2017, when he began his current employment. His employment history includes federal employment as a mechanical engineer for the U.S. Navy during 2002-2006, when he was granted the privilege of a security clearance in September 2002. (Exhibit 1 at 44)

The SOR alleged and Applicant admitted a history of financial problems. The SOR allegations consisted of a Chapter 7 bankruptcy case, filed in 2005 and discharged in 2006, and seven delinquent accounts, either charged off or in collection, ranging in amounts from \$314 to \$15,139 for a total of about \$57,681. In his answer, he denied the \$314 collection account and indicated he was suing in small claims court to rectify the matter. In addition to his admissions, the matters in the SOR are established by the documentary evidence. (Exhibits 3-7)

Applicant attributed the Chapter 7 bankruptcy case to a business failure. (Tr. 21-29) He bought a business (a gas station) in about 1999 or 2000, the business was not profitable, and it failed about a year after the purchase. Applicant stated that the business failure was due to the seller's deliberate overstatement or misrepresentation of the business's financials. He delayed filing the bankruptcy case until 2005 because he wanted to pay his debts. The bankruptcy paperwork shows he claimed \$87,307 in liabilities of which \$79,400 was unsecured indebtedness. (Exhibit 3)

Post-bankruptcy, Applicant attributed his financial problems to periodic unemployment as well as the time, effort, and money he devoted over a period of years providing care for his ailing father, who eventually passed away in November 2012. (Tr. 29-34, 74-75) Per his security clearance application, he reported full-time employment for a state government as a caregiver from March 2008 to October 2011. (Exhibit 1 at 23) He also explained that his ability to resolve his financial problems was hindered by a loss of documents due to storm damage from Hurricane Harvey in 2017. (Tr. 36-37; Exhibit E)

Concerning the seven delinquent accounts for about \$57,681, Applicant established that he settled the \$1,282 charged-off account for \$400 in October 2018, and paid in full the \$1,253 charged-off account in July 2018. (Exhibits K and J, respectively; Tr. 51-54) Applicant did not present documentation to show that the five remaining delinquent accounts were paid, settled, compromised, in a payment arrangement, cancelled, or forgiven.

Applicant disputes the validity of the \$314 collection account, which stems from a claim of money owed after he vacated an apartment. (Tr. 54-58) He claims the apartment was in good condition when he vacated, and he refuses to pay the debt. In May 2019, he initiated a small-claims court action suing the creditor. (Exhibit Q)

Three of the delinquent accounts are with the same creditor, a federal credit union, consisting of a charged-off account for \$13,506, a charged-off account for \$12,916, and a collection account for \$15,139. (Tr. 37-46, 75-80) The delinquent accounts are reflected in credit reports from February 2016, October 2017, June 2018, and November 2018. (Exhibits 4-7) The \$15,139 collection account is not reflected in the most recent credit reports from 2018, while the two charged-off accounts are reflected in all four credit reports. Applicant discussed these accounts at length during the hearing, he disputed the validity of a third delinquent account with the credit union, but I found his testimony to be unclear. Given the ambiguity, and based on the clarity of the four credit reports, I find the current existence of the two charged-off accounts for \$13,506 and \$12,916, but not the \$15,139 collection account. Applicant stated that he made some efforts to resolve the accounts, including an impromptu in-person inquiry at a branch office of the credit union. (Tr. 77-80) But the two charged-off accounts are still outstanding, and Applicant did not have a plan in place to address them. The two charged-off accounts are unresolved.

The other delinquent account is a \$13,271 charged-off account stemming from a deficiency balance on an automobile loan after involuntary repossession. (Tr. 46-51, 63-73) Applicant purchased the vehicle in 2015 for his job at the time. He made the monthly payments on the loan until he defaulted in about June 2017, which was during his most recent period of unemployment from February 2017 until October 2017. He did not make any payments on the deficiency balance, leading to the charged-off account. Applicant stated that the account was purchased by another creditor, and that he will do his best to resolve it. The account is unresolved.

Applicant stated that his current financial situation is under control, that he is meeting his current living expenses, and he is not incurring new delinquent debts. (Tr. 58-60) His annual salary is about \$135,000. His wife is not employed outside the home. He has a 401(k) account with a balance of about \$22,000. He reported having about \$1,500 in a checking account and two paid-off automobiles. A checking account statement reflected a balance of \$2,540 as of April 30, 2019. (Exhibit H)

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 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

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).

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.

With that said, it is important to note that 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).

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

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

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(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

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.

To begin discussion of the delinquent accounts, I am not concerned about the unpaid \$314 collection account stemming from the apartment rental. Applicant disputes the validity of the debt under the terms of AG ¶ 20(e), and experience teaches that such debts are often bogus. More to the point, the debt is so minor that it does not raise a concern, either alone or together with the other delinquent accounts. It is resolved under the mighty legal doctrine of *de minimis non curat lex* (= the law does not concern itself with trifles).

Turning to the matters in mitigation, Applicant's financial problems are due to a combination of factors: (1) the business failure in the early 2000s, which led to the 2005-2006 Chapter 7 bankruptcy; (2) the time, effort, and money he devoted caring for his ailing father over a period of years, which ended with his father's passing in November 2012; and (3) his three periods of unemployment during 2012-2017. Those circumstances were largely beyond his control. Applicant acted responsibly under the circumstances by seeking employment and attempting to pay his debts. Nevertheless, despite full-time work since October 2017, the financial problems persist to this day, as evidenced by the remaining three charged-off accounts in amounts of \$13,506, \$13,271, and \$12,916, for a total of nearly \$40,000. Given the circumstances, the mitigation condition at AG ¶ 20(b) applies in part, but Applicant does not receive full credit in mitigation.

It is too soon to tell if Applicant will initiate and adhere to a good-faith effort to resolve the remaining delinquent debts. With that said, he receives credit for the progress he made in 2018 for paying off or settling the two smallest charged-off accounts for a total of less than \$2,000. But Applicant is still facing a small mountain of delinquent debt, nearly \$40,000 for the three charged-off accounts. The record does not support a conclusion that he can formulate a realistic plan and then follow through on that plan to address the indebtedness. Indeed, I got the impression that he intended to do nothing further with the charged-off accounts with the credit union. In light of the high-dollar amount and age of some of the debts, it is unlikely that those debts will ever

be paid. Given the circumstances, the mitigating condition at AG ¶ 20(d) does not apply in Applicant's favor.

Although Applicant presented some evidence in mitigation, I am not persuaded that he is making an honest effort to repay his creditors for the three remaining charged-off accounts for nearly \$40,000. There are not clear indications that he is repaying the three charged-off accounts, or that he has realistic plans to do so in the near future. Taking everything into account, the evidence shows a long-standing pattern of financial problems, which are largely unresolved and ongoing. The evidence is not sufficient to mitigate his history of financial problems. The financial considerations concern is not mitigated.

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 did not meet 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.d:	Against Applicant
Subparagraphs 1.e – 1.h:	For Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge