



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



In the matter of:)
)
-----) ISCR Case No. 18-02326
)
Applicant for Security Clearance)

Appearances

For Government: Dan O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

08/23/2019

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 \$20,000 in delinquent debt. He also made deliberately false statements on a 2017 security clearance application when he denied having any delinquent debts. 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 June 28, 2017. (Exhibit 3) This document is commonly known as a security clearance application. Thereafter, on November 14, 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 guidelines known as Guideline F for financial considerations and Guideline E for personal conduct (falsification).

Applicant answered the SOR on March 20, 2019. He provided handwritten responses on the SOR in which he admitted all the allegations. He did not submit any supporting documentation with his answer to the SOR. When he answered the SOR, he was then working in support of the U.S. Armed Forces in Afghanistan. He requested a decision based on the written record in lieu of a hearing before an administrative judge.

On June 6, 2019, Department Counsel submitted all relevant and material information that could be adduced at a hearing. The file of relevant material (FORM) consists of Department Counsel's written brief and supporting documentation, some of which are identified as evidentiary exhibits. The FORM was mailed to Applicant, who received it on June 20, 2019. When he received the FORM, he listed a current home or mailing address in the Continental United States. He did not reply within 30 days of receipt of the FORM. The case was assigned to me on August 21, 2019.

Findings of Fact

Applicant is a 31-year-old employee who is seeking access to classified information for his job with a federal contractor. He works as a fuel dispatcher for a company in the defense industry. He has been so employed since June 2017. His employment history includes honorable service in the U.S. Air Force from November 2005 to November 2015. He has had full-time employment since his discharge from military service. He is married, and he and his spouse have three minor children.

The SOR alleges and Applicant admits a history of financial problems consisting of 15 delinquent accounts, in collection, charged off, or past due, in amounts ranging from \$39 to \$11,455 for a total of about \$25,210. The indebtedness includes three medical collection accounts for a total of about \$277, and a past-due child-support account in the amount of \$5,355. In addition to his admissions, the delinquent accounts are established by credit reports from 2017, 2018, and 2019. (Exhibits 7, 6, and 5, respectively)

Applicant did not present documentation to establish that any of those accounts were paid, settled, in a payment arrangement, in dispute, cancelled, forgiven, or otherwise resolved. The most recent credit report from June 2019, which was submitted by Department Counsel, shows Applicant has made payments on the \$11,455 charged-off account in SOR ¶ 1.a; the charged-off amount was \$8,200; and the past-due balance is now \$6,156. (Exhibit 5 at 2) Likewise, he paid the \$852 collection account in SOR ¶ 1.e, and the account is described as a paid collection. (Exhibit 5 at 2) Six of the seven accounts in the June 2019 credit report are delinquent. At this point, 14 of the 15 delinquent accounts in the SOR are unresolved.

Applicant did not disclose any delinquent accounts or other financial problems in response to the questions in Section 26 of the security clearance application. (Exhibit 3)

In particular, he did not disclose or otherwise reveal any adverse financial information in response to eight different questions under the subject of “delinquency involving routine accounts.” He answered in the negative to those eight questions. He was confronted about numerous delinquent accounts during a May 2018 interview conducted as part of his background investigation. (Exhibit 4) In neither his answer to the SOR nor in reply to the FORM, Applicant did not provide an explanation for omitting his delinquent financial accounts on his security clearance application.

Applicant did not present any information about his employment record, current or in the past. He did not present any information about his performance of duty while in the U.S. Air Force. Nor did he present any favorable letters of recommendation or support.

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

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).

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(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; 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, I note as a starting point that Applicant has had full-time employment for many years, dating back to his time in military service. Nevertheless, his financial problems are largely unresolved and ongoing, he has

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

numerous delinquent accounts, and his indebtedness did not occur under unusual circumstances (e.g., loss of employment, unexpected medical emergency, divorce, etc.). Accordingly, the mitigating condition at AG ¶ 20(a) does not apply in Applicant's favor.

Applicant has not made "a good-faith effort" to resolve the vast majority of the indebtedness reflected in the SOR. He receives some credit for resolving the \$852 collection account and reducing the past-due balance on a rather large charged-off account. Otherwise, he has made little to no progress. Moreover, aside from Exhibit 5 offered by Department Counsel, what is missing here is documentation in support of his case. For example, there is no documentation to establish that he initiated and is adhering to a good-faith effort to pay or otherwise resolve the remaining delinquent accounts. Likewise, there is no documentation showing that he has the financial wherewithal or an overall plan to resolve his delinquent accounts. Accordingly, the mitigating condition at AG ¶ 20(d) does not apply in Applicant's favor.

Under Guideline E, personal conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about a person's reliability, trustworthiness, and ability to protect classified or sensitive information. The concern is stated fully in AG ¶ 15.

In analyzing the facts of this case, the following disqualifying condition applies:

AG ¶ 16(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

As set forth in the findings of fact, Applicant made deliberately false statements when he omitted his numerous delinquent financial accounts in response to multiple questions on his June 2017 security clearance application. He has not provided an explanation for his omissions. I have considered the mitigating conditions under AG ¶ 17, and none apply in Applicant's favor. Making deliberately false statements during the security clearance process is serious misconduct, and it is not easily explained away, excused, or otherwise mitigated. Based on the record, Applicant's misconduct in falsifying his 2017 security clearance application is too serious to be mitigated.

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 gave particular consideration to his honorable military service. 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
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	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