



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



In the matter of:

Applicant for Security Clearance

)
) ISCR Case No. 18-02930
)
)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*
08/07/2019

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. Applicant failed to mitigate the security concern raised by his problematic financial history. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (e-QIP format) on November 29, 2016. This document is commonly known as a security clearance application. On February 6, 2019, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility 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.¹ It detailed the factual reasons for

¹ This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In

the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on March 7, 2019, and requested a decision based on the written record without a hearing.

On April 15, 2019, Department Counsel submitted a file of relevant material (FORM). The FORM was mailed to Applicant on April 16, 2019. He was given thirty days to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant received the FORM on April 30, 2019. Applicant did not respond to the FORM. The case was assigned to me on July 9, 2019.

Procedural Matters

Included in the FORM were seven items of evidence. Items 1 through 7 are marked as Government Exhibits (GE) 1 through 7. GE 1 through 6 are admitted into evidence without objection. GE 7 is a report of investigation (ROI) summarizing Applicant's interviews that took place in April, May, and October 2018 during the background investigation. The ROI is not authenticated, as required under ¶ E3.1.20 of the Directive. Department Counsel's written brief includes a prominent paragraph advising Applicant that the summary was not authenticated and that failure to object may constitute a waiver of the authentication requirement. Nevertheless, I am not persuaded that a *pro se* applicant's failure to respond to the FORM, which response is optional, equates to a knowing and voluntary waiver of the authentication requirement. The record does not demonstrate that Applicant understood the concepts of authentication, waiver, and admissibility. It also does not demonstrate that he understood the implications of waiving an objection to the admissibility of the ROI. Accordingly, Exhibit 6 is inadmissible, and I have not considered the information in the ROI. See *generally* ISCR Case No. 12-10933 (App. Bd. Jun. 29, 2016) (In a concurring opinion, Judge Ra'anani notes the historical concern about reports of investigation in that they were considered by some to present a heightened problem in providing due process in security clearance cases. Judge Ra'anani raises a number of pertinent questions about using an unauthenticated ROI in a non-hearing case with a *pro se* applicant.).

Findings of Fact

Applicant is 53 years old, married with two adult children. He is a high school graduate who received training certificates from two state community colleges. Applicant served in the U.S. Army Reserve from February 1984 until April 1992, when he was honorably discharged. He has worked for a defense contractor since May 2016. (GE 3.)

Under Guideline F, the SOR alleged 14 delinquent debts totaling more than \$24,000. Applicant admitted these delinquent debts, claiming that he was laid off and used credit cards and other accounts to try to recover financially. He stated that he intends to address his delinquencies and avoid bankruptcy. (GE 2.)

addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on June 8, 2017, apply here.

The record shows that Applicant worked full-time from December 2005 until December 2010 when he was laid off due to his employer's downsizing. After he was laid off, Applicant worked part-time as self-employed until the present. In February 2013, he found additional part-time employment until February 2015. In February 2015, he found full-time employment which lasted until his employer downsized in January 2016, costing Applicant his job. Applicant was unemployed from January 2016 until May 2016. (GE 3, pp. 11-20.) Applicant's financial delinquencies continue to this day. (GE 4-6.)

Law and Policies

It is well-established law that no one has a right to a security clearance. *Department of 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). As noted by the Supreme Court in *Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." 484 U.S. at 531. 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. Directive, ¶ 3.2.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information. An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level. Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information. ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004). The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted. Directive, ¶ E3.1.14. An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven. Directive, Enclosure 3, ¶ E3.1.15. In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. Directive, Enclosure 3, ¶ E3.1.15. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence. 484 U.S. at 531. The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard. ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

Discussion

Guideline F - Financial Considerations

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, financial problems, or difficulties. AG ¶ 18 states the overall concern:

Failure 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. AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

The concern is broader than the possibility that a person might knowingly compromise classified 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 information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions:

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(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.

Facts admitted by an applicant in an answer to a SOR require no further proof by the Government. ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995) ("any admissions [applicant] made to the SOR allegations . . . relieve Department Counsel of its burden of proof"); ISCR Case No. 94-0569 at 4 and n.1 (App. Bd. Mar. 30, 1995) ("[a]n applicant's admissions, whether testimonial or written, can provide a legal basis for an Administrative Judge's findings"). Applicant has admitted the delinquent debts alleged in the SOR. The evidence supports a conclusion that Applicant has had a problematic financial history, as alleged. This raises security concerns under AG ¶¶ 19(a) and (c). The next inquiry is whether any potentially mitigating conditions apply.

Applicant's delinquencies persist to this day and remain substantial. On this record, I cannot find that AG ¶ 20(a) applies.

Applicant attributes his financial difficulties to being laid off and using credit cards and other accounts to (unsuccessfully) keep current on his debts. Applicant did suffer from two downsizings and periods of underemployment and unemployment. Therefore, I

find that the circumstances that caused Applicant's financial problems were largely beyond Applicant's control. AG ¶ 20(b) potentially applies, subject to an examination of evidence that he has acted responsibly in light of the adverse circumstances he has faced.

Applicant, however, submitted no evidence bearing on how he has been addressing his delinquent debts. He has submitted no evidence that he is reliably taking steps to address those debts. Applicant has only proffered in his Answer that he intends to honor those delinquent debts. Beyond that, the record is barren of evidence that would support a finding that AG ¶ 20(b) fully applies. DOHA's Appeal Board has long ago stated that promises to pay one's debts in the future are not a substitute for a clear record of debts actually paid. ICR Case No. 98-0188 at 3 (App. Bd. Apr. 29, 1999). In determining an individual's security worthiness, the Government cannot rely solely on an Applicant's promises that substantial debts will be resolved at a future date.

The evidence of Applicant's financial condition raises doubts about his reliability, trustworthiness, good judgment, and ability to protect classified 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 gave due consideration to the whole-person concept. AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6).

Accordingly, I conclude that Applicant 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

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.n:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas
Administrative Judge

