



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



In the matter of:)
)
-----) ISCR Case No. 19-01141
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq. Department Counsel
For Applicant: Daniel G. Barker, Esq.

03/12/2020

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. His financial problems were due to underemployment and unemployment as well as relying on the services of a tax preparer who prepared erroneous federal tax returns. He initiated a good-faith effort to repay his delinquent debts and resolved all five of the delinquent debts at issue. He also entered into an installment agreement with the IRS to repay the back taxes he owes for multiple tax years. The evidence is sufficient to mitigate his history of financial problems. Accordingly, this case is decided for 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 18, 2017. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on April 24, 2019, 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 May 20, 2019. He admitted the factual allegations and he provided brief explanations and supporting documentation. He requested a hearing before an administrative judge.

The case was assigned to me on September 3, 2019. The hearing took place on December 3, 2019. Applicant appeared with counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-5. Applicant offered documentary exhibits, which were admitted as Exhibits A-F. Other than Applicant, no witnesses were called. The hearing transcript (Tr.) was received on December 11, 2019.

The record was kept open to provide Applicant an opportunity to submit documentation concerning his military service. Applicant made a timely submission, and the additional documents are admitted without objections as Exhibit G.

Findings of Fact

Applicant is a 65-year-old employee who is seeking to obtain a security clearance in the defense industry, although he held a top-secret security clearance during his military service. He works as a quality assurance or quality control inspector in avionics. He has been so employed since January 2017. He was in a long-term marriage until his wife passed away in 2018. He has four adult children. He is paid hourly, and he estimated his gross income for 2019 at about \$66,000.

Before his current job, Applicant's employment history was inconsistent resulting in insufficient income to meet his living expenses. (Exhibit 1; Tr. 33-34) For example, his employment history as reported in his SF 86 shows the following: (1) he was a customer-service representative for a staffing agency during 2016-2017; (2) he was unemployed for a period of about four months in 2016; (3) he worked part-time as a night stocker for a grocery store for several months during 2015-2016; (4) he was unemployed for about five months in 2015; (5) he worked as a quality inspector (electronics) for a staffing agency for about three months in 2015; and (6) he was unemployed for about five months during 2014-2015.

Applicant's employment history also includes honorable service in the U.S. Air Force. (Exhibit G) His primary specialty was working in the field of aircraft electrical and environmental systems. He retired from military service in 2001 with 23 years of service. He receives retired pay as well as disability compensation from the Department of Veterans Affairs due to a 40% disability rating. Together, it amounts to about \$3,000 monthly.

The SOR alleged and Applicant admitted a history of financial problems. In addition to his admissions, factual allegations in the SOR are established by the documentary evidence. (Exhibits 2-5) The SOR concerns five collection of charged-off accounts for a total of about \$34,249; \$10,000 in back taxes owed to the IRS for tax year 2014; and \$10,000 in back taxes owed to the IRS for tax year 2015.

The largest of the delinquent financial accounts is a \$26,496 charged-off account stemming from an automobile loan. (Exhibit A) Applicant purchased a used vehicle in July 2014 with dealer financing that included interest at an annual percentage rate of 26%. He recalls the vehicle was repossessed several months later. The account was resolved (paid in full and/or settled in full) in July 2019.

Applicant paid in full a \$792 collection account stemming from a cable TV account in May 2019. (Exhibit B)

Applicant paid in full a \$128 collection account stemming from a credit card account in May 2019. (Exhibit C) He disputes the account, but elected to pay it given the low-dollar amount.

Applicant had a \$2,082 judgment entered against him in 2015 stemming from an eviction action on a rental property. He paid the judgment creditor \$4,493 in May 2019, and the judgment is now satisfied. (Exhibit D)

Applicant had a \$4,751 judgment entered against him in 2015 stemming from a rental property. He resolved the debt with the creditor, and the judgment was satisfied in October 2019. (Exhibit E)

Applicant is in the process of resolving his indebtedness to the IRS. (Exhibit F) He began making monthly payments in about July 2019. His proposal to have monthly installment payments automatically deducted from his checking account was approved by the IRS in September 2019. The agreed upon monthly payment is \$538. The installment agreement covers multiple tax years, 2011, 2012, 2013, 2014, 2015, and 2018. Applicant estimated he owes back taxes of \$35,000 to \$40,000 in total. (Tr. 30) He attributes falling behind on taxes to relying on a tax preparer who prepared erroneous federal tax returns, which led to an IRS audit. He believes he has more than sufficient cash flow to make the monthly installment payment given his current wages coupled with his retired pay and disability compensation, which resulted in a gross income of about \$100,000 in 2019.

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 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,

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.

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 pay annual federal, state, or local income tax as required;

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;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

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, Applicant's financial problems are due to underemployment and unemployment as well as relying on the services of a tax preparer who prepared erroneous federal tax returns. Those circumstances were largely beyond his control. Applicant acted responsibly under the circumstances, as evidenced by his remedial actions. Given the circumstances, the mitigating condition at AG ¶ 20(b) applies in Applicant's favor.

Applicant made a good-faith effort to resolve his delinquent financial accounts. He receives substantial credit for resolving all five of the delinquent debts in the SOR. The timing of his actions is a consideration, as he did so after issuance of the SOR in April 2019. But I have also considered that it probably took Applicant some time to get back on his feet financially once he resumed employment in a good-paying job in January 2017. And the passing of his spouse in 2018 is another consideration. Given the circumstances, the mitigating condition at AG ¶ 20(d) applies in Applicant's favor.

Applicant has also made arrangements with the IRS to pay the amount owed in back taxes for multiple tax years. He has made the monthly payment since July 2019,

and the installment agreement was formally approved in September 2019. The agreement calls for the monthly payment to be automatically deducted from his checking account. Given his level of income, he has sufficient cash flow to adhere to the agreement going forward. Given the circumstances, the mitigating condition at AG ¶ 20(g) applies in Applicant's favor.

Applicant presented a good but less than perfect case in mitigation, but, as in all human affairs, perfection is not the standard. 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).

Here, I am persuaded that Applicant has made and is making an honest effort to be financially responsible and repay his creditors. There are clear indications that his financial problems are under control. The five delinquent debts were resolved to the satisfaction of the various creditors, and he has a formal installment agreement with the IRS to address tax indebtedness. It is probable that he will continue to make the agreed upon monthly payments and resolve the back taxes. Taking everything into account, Applicant demonstrated good judgment, reliability, and trustworthiness by persevering under difficult circumstances. The financial considerations concern is mitigated.

Following *Egan* and the clearly consistent standard, I have no 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 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:	For Applicant
Subparagraphs 1.a - 1.g:	For Applicant

Conclusion

It is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility granted.

Michael H. Leonard
Administrative Judge