



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



In the matter of:)
)
-----) ISCR Case No. 19-01554
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq. Department Counsel
For Applicant: *Pro se*

09/15/2020

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for access to classified information. The evidence is not sufficient to mitigate his history of financial problems, which is ongoing. He also made deliberately false statements about his financial record in response to questions on his security clearance application. 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 May 15, 2017. (Exhibit 1) This document is commonly known as a security clearance application. He responded to written interrogatories on June 6, 2019. Thereafter, on June 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 guidelines known as Guideline E for personal conduct (falsification) and Guideline F for financial considerations.

Applicant answered the SOR on July 11, 2019. He admitted the factual allegations under both guidelines and provided a few explanatory remarks. He also requested a hearing before an administrative judge.

The case was assigned to me on September 3, 2019. The hearing took place as scheduled on December 4, 2019. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-9, with the exception of Exhibits 3 and 4, which were withdrawn. Applicant did not offer documentary exhibits. Other than Applicant, no witnesses were called. The hearing transcript (Tr.) was received on December 13, 2019.

Findings of Fact

Applicant is a 38-year-old employee who is seeking to retain a security clearance. (Tr. 5-6) He works as an aircraft mechanic for a company in the defense industry. He has been so employed since May 2017. His educational background includes a bachelor's degree in information technology awarded in October 2016. He is married, and he and his spouse share their household with five children, ages 14, 13, 12, 7, and 5. The 13-year-old child is a niece. His wife is recently employed at a call center. (Tr. 49)

Applicant's employment history includes honorable service in the U.S. Air Force beginning in April 2003 until his release from active duty in May 2013. His separation was voluntary, although he stated that he felt forced out, and he left with a separation payment of \$10,000. (Tr. 25-26) He was trained and worked as an aircraft mechanic while on active duty.

After his honorable discharge from the Air Force, Applicant was unemployed from June 2013 to January 2015. He was a student during this time working on his bachelor's degree. He had a part-time job with an aviation company from February 2015 to October 2016, while at the same time working on his bachelor's degree. He was then unemployed for a few months, from November 2016 to April 2017. He began his current job in May 2017, more than two years before the hearing.

The SOR alleged and Applicant admitted a history of financial problems. In addition to his admissions, the factual allegations in the SOR are established by the documentary evidence. (Exhibits 2, 5-9) The SOR concerns the following matters: (1) a mortgage loan that went into foreclosure in 2013; (2) three car loans that ended with repossession and deficiency balances of \$8,313, 4,238, and \$1,922; (3) five collection or charged-off accounts in amounts ranging from \$380 to \$2,299 for a total of \$4,784; and (4) two unpaid judgments in amounts of \$12,067 and \$982. Applicant did not present documentation to establish that any of these delinquent debts were paid,

settled, in a payment arrangement, cancelled, forgiven, or otherwise resolved. (Tr. 31-46) A couple of these matters require further discussion.

SOR ¶ 1.a—Applicant obtained a mortgage loan in 2009 to buy a home for about \$158,000. (Exhibit 6; Tr. 31-33) He bought the home with the assistance of a VA home loan. He was unable to make the loan payments due to a decline in income related to his reduction in pay and his subsequent honorable discharge from the Air Force. A notice of trustee's sale was made in September 2013 and the house was sold at auction in 2014. There is no indication of a deficiency balance after foreclosure; indeed, the June 2017 credit report shows \$0 past due. (Exhibit 7 at 5) The state where the home is located has an anti-deficiency statute that would normally prevent a lender from seeking a deficiency judgment after foreclosure. Given the circumstances, I find this matter is resolved.

SOR ¶ 1.g—Applicant explained that the \$12,067 judgment, filed in July 2013, was paid via garnishment of his wages from his current job over a two-year period. (Exhibit 5; Tr. 42-43) The wage garnishment took about \$1,100 per month. The judgment does not appear in the most recent credit reports from 2019. (Exhibits 8-9) Given these circumstances, I find the judgment is resolved.

The SOR also alleged that Applicant made four deliberately false statements when completing his May 2017 security clearance application and a fifth false statement during the course of his November 2018 background investigation. Three of the allegations concerned, essentially, his failure to disclose that he was subject to non-judicial punishment under Article 15, UCMJ, in about January 2013, while on active duty with the Air Force. Although he admitted the allegations in his answer to the SOR, he clarified that he did not understand or realize that he had been subject to Article 15 proceedings in addition to a reduction or demotion in pay grade from E-5 to E-4. At the hearing, he further explained his mistaken belief or confusion concerning the Article 15 proceedings. (Tr. 27-30, 47-48) He stated that he received a demotion because he failed to follow a technical data order while performing aircraft maintenance, but he understood the matter was limited to a demotion and no more. I found his explanation odd, but nonetheless credible and worthy of belief.

The other two falsification allegations concern failure to disclose adverse financial information (e.g., delinquent accounts, judgments) in response to two questions in the May 2017 security clearance application. Applicant admitted he lied in response to the two questions because he was worried he would not obtain the security clearance or his current job. (Tr. 48-49)

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. . . .

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.

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(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; 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, Applicant's financial problems are related to his separation from military service and the corresponding decline in pay and benefits. Those circumstances occurred several years ago in 2013. His financial problems are also related to his periods of unemployment, although he has had his present full-time job since May 2017. While those matters were largely beyond his control, I cannot conclude that he has acted responsibly under the circumstances. He has done little to address his delinquent debts. The foreclosure on the mortgage loan essentially took care of itself, with the benefit of a VA loan and a state with an anti-deficiency statute. The single delinquent debt that was paid, the \$12,067 judgment, was by wage garnishment, which is not a form of voluntary payment. Otherwise, he has taken no action to resolve the remaining nine delinquent accounts in the SOR. Given the circumstances, the mitigating conditions at AG ¶ 20(b) and AG ¶ 20(d) do 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 two deliberately false statements during the security clearance process. He omitted derogatory information about his financial record in response to two questions on his May 2017 security clearance application. He did so because he was concerned that truthful answers would have negative consequences for him. The disqualifying condition at AG ¶ 16(a) applies.

In mitigation, I have considered all the information Applicant presented, including his honorable military service. I have also 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.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b - 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h - k:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraphs 2.a – 2.b:	For Applicant
Subparagraph 2.c -2.d:	Against Applicant
Subparagraph 2.e:	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