



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 19-01572

Appearances

For Government: Gatha Manns, Esq. Department Counsel

For Applicant: *Pro se*

08/26/2020

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke his eligibility for access to classified information. 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 October 21, 2017. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on June 21, 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 July 15, 2019. He admitted the factual allegations, he provided a two-page memorandum in explanation, and he requested a hearing before an administrative judge.

The case was assigned to me on September 6, 2019. The hearing took place as scheduled on September 25, 2019. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-3. Applicant did not offer documentary exhibits. Other than Applicant, no witnesses were called. The hearing transcript (Tr.) was received on October 7, 2019.

The record was kept open until October 9, 2019, to provide Applicant an opportunity to submit documentation in support of his case. He made a timely submission, and the documents (along with the e-mail correspondence) are admitted without objections as Exhibits A-G.

Findings of Fact

Applicant is a 37-year-old employee who is seeking to retain or obtain a security clearance. (Tr. 5-7) He works as a mission or quality assurance manager for a large company in the defense industry. He has been so employed since September 2013. His educational background includes a high school diploma and some college. His employment history also includes honorable service in the U.S. Air Force beginning in 2001 until his release from active duty in September 2013. (Exhibit C) His decorations include the Afghanistan Campaign Medal with 2 service stars.

Applicant has been separated from his wife, whom he married in 2009, since September 2013. He has three minor children, one before the marriage and two after the separation. (Tr. 29-33) He pays \$667 per month in court-ordered child support for his first child, and he pays about \$800 per month in voluntary child support for his younger children. In total, his child-support obligation is about \$1,467 per month. He provides health insurance for his three children via his own policy. (Tr. 65-66) He also provides spending money to his son and helps pay for daycare for a daughter. (Tr. 64-65)

Applicant has done well in his employment in the defense industry, as shown by receiving promotions and pay raises over the last several years. He increased his annual earnings from about \$48,000 in 2014 to about \$115,000 in 2019. (Answer; Exhibit G)

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 2-3) The SOR concerns 11 charged-off, in collection, or past-due accounts ranging in amounts from \$191 to \$5,496 for a total of approximately \$18,584.

Applicant explained and presented documentation to show that he is making monthly payments on three collection accounts placed with the same creditor, as

reflected in SOR ¶¶ 1.e, 1.f, and 1.g in the amounts of \$1,025, \$1,014, and \$958, respectively. (Exhibits A, B, D, and F) He is paying a total of \$160 per month, and he has reduced the outstanding balances to \$641, \$936, and \$889, respectively, as of October 2019. (Exhibits D and F). His plan is to repay the delinquent debts three at a time unless he receives another promotion with a salary increase that would allow him to accelerate debt repayment. (Tr. 25-26) The other eight delinquent debts in the SOR have not been paid, settled, entered into a repayment arrangement, cancelled, forgiven, or otherwise resolved.

Applicant presented an October 2019 credit report that is consistent with the Government's evidence. (Exhibit D) It reflects 11 adverse accounts, 10 of which are alleged in the SOR. It also reflects six satisfactory accounts, some of which are closed. His credit score ranges from 585 to 579, which is described as "needs work." (Exhibit E)

Applicant attributed his delinquent indebtedness to the financial setback he experienced upon his honorable discharge from military service in 2013. (Answer; Tr. 22-25) He points to a combination of circumstances: (1) his premature separation from the Air Force and his concurrent separation from his spouse; (2) the loss of various financial benefits he enjoyed due to his military service; (3) the initial decline in pay compared with his military pay; and (4) providing family and friends with financial assistance (e.g., he co-signed an auto loan for a friend that ended in repossession of the vehicle and a \$5,496 charged-off account as alleged in SOR ¶ 1.a). He also acknowledged being young and irresponsible with money by buying new cars every few years when he was in the Air Force and also by helping others. (Tr. 56-57) He has a different attitude today and is motivated by his desire to provide for his children. (Tr. 57)

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

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.

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, 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;

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.

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 separation from military service and the corresponding decline in pay and benefits, and the separation from his spouse. Both events occurred in 2013. Those are significant life events that can effect if not overwhelm even a well-adjusted person. While those matters were largely beyond his control, given the passage of about six years (September 2013 to September 2019), I cannot conclude that he has acted responsibly under the circumstances. He has done little to address his delinquent debts. His recent remedial actions beginning in 2019 were likely motivated by this case. Given the circumstances, the mitigating condition at AG ¶ 20(b) does not apply in Applicant's favor.

Applicant made a belated effort to resolve his delinquent financial accounts. He receives credit for making \$160 monthly payments on the three collection accounts placed for collection with the same creditor, as mentioned above. He has reduced the balances on each debt, but has nearly \$2,500 more to repay (or about 15 monthly payments) as of October 2019. The other eight delinquent debts remain untouched until he completes repaying the first three collection accounts. Given the circumstances, the mitigating condition at AG ¶ 20(d) applies in Applicant's favor, but only to a limited extent.

Applicant was both sincere and candid when he expressed his intention to resolve his delinquent debts. Nevertheless, it is too soon to tell if Applicant will follow through on his stated plan and repay his delinquent debts, a task he neglected for several years. Although there is some evidence in mitigation, the evidence is not sufficient at this point to justify full mitigation of the security concern stemming from his history of financial problems.

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 gave him credit for his honorable military service, which includes deployments to Afghanistan. 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.k:	Against 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