



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



In the matter of:)	
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)	ISCR Case No. 20-02942
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/02/2021

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 explain, extenuate, or 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 November 6, 2019. (Exhibit 3) This document is commonly known as a security clearance application. He provided additional information when interviewed in February 2020 during a background investigation. (Exhibit 8) Thereafter, on December 2, 2020, 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 January 5, 2021. He admitted all SOR allegations; he provided explanatory remarks with his answer; and he provided 22 pages of supporting documentation. He requested a decision based on the written record in lieu of a hearing.

On January 31, 2021, Department Counsel submitted a file of relevant material (FORM). It consists of Department Counsel's written brief and supporting documentation, some of which are identified as evidentiary exhibits herein. The FORM was mailed to Applicant, who received it on February 12, 2021. He replied on March 25, 2021. His reply to the FORM consists of a four-page memorandum and eight pages of supporting documentation, all of which are admitted as Exhibit A. The case was assigned to me on April 23, 2021.

Findings of Fact

Applicant is a 43-year-old employee who is seeking eligibility for access to classified information for his job with a federal contractor. He works full-time as a support analyst. He has been so employed since October 2019. He has held a security clearance since 2007. (Exhibit 3 at Section 25) He is married and has two minor children. His first marriage was relatively brief and ended in divorce. His educational history includes a high school diploma awarded in 1997, a certificate of completion from a computer center awarded in 2016, and a certificate of completion from a maritime training school awarded in 2017.

Applicant's employment history includes honorable service on active duty with the U.S. Coast Guard during 2003-2015, when he served as an operations specialist. After his discharge, he had a full-time job as a radio electronic officer from November 2015 to June 2018. He then had a full-time job as a maritime compliance officer from July 2018 to October 2019.

The SOR alleges a history of financial problems consisting of eight delinquent accounts in amounts ranging from \$1,087 to \$30,178 for a total of about \$86,000. The various accounts are described as collection or charged-off accounts along with a single past-due account for \$1,935 on a balance of \$15,675. In addition to his admissions, the delinquent accounts are established by Exhibits 4, 5, 6, 7, 8, and 9.

Applicant did not disclose or otherwise reveal any specific delinquent financial accounts when he completed his security clearance application. (Exhibit 3 at Section 26) But he did indicate that he was seeking assistance to resolve financial difficulties that he had after leaving the Coast Guard in 2015. He elaborated on the underlying cause of his financial difficulties in both his answer to the SOR and his reply to the FORM. He explained that the cause was his transition to civilian life in 2015 and a substantial decline in income compared with the pay and benefits he received while

serving in the Coast Guard.¹ Although he was earning less, he continued to maintain a similar lifestyle, which he could not afford and financed through loans and credit cards. He sought assistance for his financial difficulties in mid-2018. He obtained a better paying job in 2019 (his current employment), and was able to resume repayment of delinquent debts.

Applicant accepts accountability for his financial difficulties, and he claims he retained the services of a debt-consolidation firm in July 2018 to assist him. The supporting documentation with his Answer includes the paperwork from this firm. The paperwork described the firm as a “document-preparation company.” The agreement signed by Applicant and his spouse provides the company will provide services to assist in the removal of inaccurate items from credit reports. The consumer-services section of the agreement does not mention the term debt consolidation.

By entering into the agreement, Applicant agreed to pay an initial fee of \$1,200 and then pay a fee of \$1,118.43 for 23 monthly payments, in exchange for the services provided, for a total of nearly \$27,000. Furthermore, in the client-acknowledgments section of the agreement, it is made clear that the company is not in the debt-consolidation business. Applicant acknowledged, among other things, the following: (1) he could perform any of the services explained in the agreement without entering into the agreement; (2) the company does not settle or reduce his debt but rather assists him in determining if his creditors are reporting accurate information to credit reporting agencies; (3) the company is not a debt-consolidation or debt-settlement company; and (4) the company does not pay off his alleged creditors with the funds he pays, rather those funds go directly to pay the company for their services it provides to him. I find that Applicant did not enter into a debt-consolidation plan with the company but rather hired the company to provide services in the nature of credit repair.

Applicant has made some progress in resolving the delinquent debts in the SOR. As discussed in more detail below, he has resolved three of the eight delinquent debts.

The debt in SOR ¶ 1.a concerns a \$30,178 collection account for a personal loan. He entered into a settlement agreement with the creditor in December 2020, and he agreed to pay the sum of \$16,200 by making 36 monthly payments of \$450 beginning November 2020 through October 2023. (Exhibit A) He provided a copy of the final consent order (a document filed in state court) used to settle the debt, but he did not provide proof of payment per the terms of the settlement. I find this debt is unresolved.

The debt in SOR ¶ 1.b concerns a charged-off credit card account for \$18,472. In his reply to the FORM, Applicant asserted the debt was negotiated by the debt-

¹ Applicant stated in his reply to the FORM that he was unemployed for nearly a year after his discharge from the Coast Guard, but his security clearance application discloses no periods of unemployment. (Exhibit 3 at Section 13A)

consolidation firm and the account has been closed. He also provided a letter from the credit union showing the account was charged off.² I find this debt is unresolved.

The debt in SOR ¶ 1.c concerns a \$16,585 collection account for a credit card account. In his reply to the FORM, Applicant asserted the debt was negotiated by the debt-consolidation firm and the account has been closed with nothing owed. He did not provide supporting documentation for his assertion. The most recent credit report from October 2020 shows the account had a past-due balance of \$16,585, which was charged off by the creditor. (Exhibit 9 at 3) I find this debt is unresolved.

The debt in SOR ¶ 1.d concerns an \$11,948 charged-off account. Both correspondence from the creditor and the October 2020 credit report show the account has been closed with a balance of \$0. (Exhibit A; Exhibit 9 at 2) I find this debt is resolved.

The debt in SOR ¶ 1.e concerns a past-due account in the amount of \$1,935 for a personal loan obtained from a peer-to-peer lending company. In his reply to the FORM, Applicant asserted the debt was not delinquent and was being repaid as agreed. He did not provide supporting documentation for his assertion. The October 2020 credit report shows the account with a past-due balance of \$1,935, a monthly installment payment of \$644, and a balance of \$15,675. (Exhibit 9 at 4) I find this debt is not resolved.

The debt in SOR ¶ 1.f concerns a \$4,874 charged-off credit card account. In his reply to the FORM, Applicant asserted the debt was negotiated by the debt-consolidation firm and the account has been closed with nothing owed. He did not provide supporting documentation for his assertion. The October 2020 credit report shows the account as an unpaid collection account with a balance of \$4,874. (Exhibit 9 at 1) I find this debt is not resolved.

The debt in SOR ¶ 1.g concerns a \$1,291 collection account for telecommunication services. Applicant settled this account for the lesser amount of \$655 in January 2021. (Exhibit A) I find this debt is resolved.

The debt in SOR ¶ 1.h concerns a \$1,087 medical collection account. The account now has a balance of \$0. (Exhibit A) I find this debt is resolved.

² Applicant does not understand the meaning and effect of a charged-off account. A charge off means the creditor has decided to treat an account receivable as a loss or expense because payment is unlikely. *Black's Law Dictionary* 266 (Bryan A. Garner ed., 9th ed., West 2009). In other words, the lender or creditor has written the account off as a loss (e.g., a bad debt), and the account is closed to future charges. The account may be sold to a debt buyer or transferred to a collection agency. And the debtor is still legally obligated to pay the debt provided the time limit in the relevant statute of limitations has not run or lapsed.

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.³ 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.”⁴ 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.⁵ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.⁶

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁷ 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.⁸

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

³ *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).

⁴ 484 U.S. at 531.

⁵ 484 U.S. at 531.

⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁸ Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15

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; and

AG ¶ 19(e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or non-payment, or other negative financial indicators.

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 here. After his discharge from the Coast Guard, Applicant engaged in a pattern of irresponsible spending beyond his means when he elected to assume excessive indebtedness to pay for a lifestyle that he could not afford on his earned income.

Applicant has not sufficiently explained, extenuated, or mitigated his history of financial problems, which are unresolved and ongoing. I have reviewed all of the mitigating conditions under Guideline F and conclude none are fully applicable. Applicant has made some progress by resolving three of the eight delinquent debts in the SOR; however, the remaining five delinquent debts are wholly unresolved, the debts total tens of thousands of dollars, and he has no plan in place to resolve them.

Further complicating his financial situation, Applicant engaged the services of a firm that provides credit-repair services believing it was in the debt-consolidation business. In doing so, he agreed to make installment payments to the firm over two years for nearly \$27,000, which would have gone a long way toward paying or settling the five unresolved delinquent accounts. He did not provide any documentation to show that he is in good standing with the installment agreement, which was scheduled to conclude with a final installment payment in June 2020. Like his irresponsible spending, his decision to hire the credit-repair firm believing it was a debt-consolidation firm indicates a lack of financial awareness or sophistication that militates against a favorable clearance decision.

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 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-c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-f:	Against Applicant
Subparagraphs 1.g-h:	For 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