



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



In the matter of:)
)
-----) ISCR Case No. 20-03080
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

06/10/2021

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 that consists primarily of a number of federal student loans in collection. 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 1, 2019. (Exhibit 4) This document is commonly known as a security clearance application. He provided additional information when interviewed in January 2020 during a background investigation. (Exhibit 5) Thereafter, on December 4, 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 February 10, 2021. He admitted all SOR allegations; he provided a two-page memorandum in explanation; and he provided one page of supporting documentation. He requested a decision based on the written record in lieu of a hearing.

On March 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 April 12, 2021. His reply to the FORM was received on April 16, 2021. It consists of a six-page memorandum and two pages of supporting documentation, all of which are admitted as Exhibit A. The case was assigned to me on May 17, 2021.

Findings of Fact

Applicant is a 53-year-old employee who is seeking eligibility for access to classified information for his job with a federal contractor. He works part-time as a technician at a military installation. He has been so employed since August 2019, although he noted in his Answer that he and all other part-time employees were off work from December 11, 2020, through January 17, 2021. Before his current job, he worked as a part-time truck driver for four different firms for several years during 2012-2019. He is married and has one adult child.

Applicant's employment history includes honorable military service. He initially served in the Army National Guard during 1987-1989. Next he was a Sailor on active duty with the Navy during 1989-1994. He reported that he held a security clearance while in the Navy. (Exhibit 4 at Section 25) He then served in the Navy Reserve during 1994-1998.

The SOR alleges a history of financial problems consisting of 11 delinquent accounts as follows: eight student loans in collection for a total of about \$31,305; two collection accounts in amounts of \$583 and \$396; and one medical collection account for \$256. In addition to his admissions, the delinquent accounts are established by credit reports from December 2019 and March 2021. (Exhibits 6 and 7)

Applicant disclosed his delinquent federal student loans when he completed his 2019 security clearance application. (Exhibit 3 at Section 26) He reported an estimated balance of \$55,576. He stated he defaulted on the loans due to an inability to satisfy the debts because he was providing for his family. He explained the indebtedness was in repayment via wage garnishment that withheld 15% of his disposable pay every pay period until the balance is paid in full. The student loans stem from his attendance at a state university more than ten years ago. (Exhibit 5 at 2)

In his 2021 Answer to the SOR, Applicant confirmed the loans were still subject to the wage garnishment. He also attached a one-page document, a copy of IRS Form 1089-E, which shows the sum of \$6,103 in student loan interest was received by the lender or creditor during tax year 2019.

In his reply to the FORM, Applicant explained that after completing his studies at the state university, payments for the student loans were in deferment, forbearance, or postponed for several years. He stated that he was repaying the loan indebtedness via the wage garnishment. The only documentation he provided concerning the student loans were two documents from December 2018; both are from the third-party collection agency assigned to collect the student loans; and, taken together, the documents show a total amount owed of \$24,296 as of December 2018. (Exhibit A) Applicant did not provide a current account statement for the student loans, nor did he provide other paperwork to document a payment history for the loans. Given these circumstances, I am unable to determine the current amount owed, but there is substantial evidence to find Applicant's earned income is subject to wage garnishment for payment of his defaulted student loans.

Applicant also stated he was able to repay the three collection accounts without wage garnishment, but he did not provide any supporting documentation concerning those debts. I find that these debts are not resolved.

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 Appeal Board has

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.

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; and

AG ¶ 19(c) a history of not meeting financial obligations.

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.

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

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 repaying the defaulted student loans via wage garnishment, but that is not considered a truly voluntary means of repayment. With that said, he failed to provide adequate documentation to show the total amount he currently owes on the defaulted student loans, nor did he establish a paper record of his payment history for the loans. Likewise, he failed to provide documentation showing any forward progress to resolve the three relatively minor collection accounts.

In deciding this case, I considered Applicant's honorable military service and his multiple part-time jobs going back to 2012, which no doubt limited his ability to repay delinquent debt while at the same time meeting his current financial obligations. Nevertheless, Applicant has not done enough to mitigate the security concern stemming from his history of financial problems.

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-k:	Against 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