



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 20-03611
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

07/30/2021

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for access to classified information. He did not present sufficient evidence 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 May 12, 2020. (Exhibit 3) This document is commonly known as a security clearance application. He provided additional information when interviewed during a 2020 background investigation. (Exhibit 4) Thereafter, on March 24, 2021, after reviewing the available information, 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 March 26, 2021. His written answers were mixed; he admitted eight delinquent accounts and denied the ninth; he provided brief explanatory remarks in a one-page memorandum; and he did not provide supporting documentation. He requested a decision based on the written record in lieu of a hearing before an administrative judge.

On April 29, 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 May 12, 2021. He did not reply to the FORM. The case was assigned to me July 28, 2021.

Findings of Fact

Applicant is a 52-year-old employee who is seeking eligibility for access to classified information for his job with a federal contractor. He works full-time as an electronics technician for a company doing business in the defense industry. He has been so employed since July 2018. He has held a security clearance in the past while working in the defense industry and during military service. (Exhibit 3 at Section 25) He is married with adult children. His educational history includes an associate degree in computer electronics awarded in 1996.

Applicant's employment history includes honorable military service on active duty with the U.S. Navy during 1986-1996 and 1999-2009, when he retired. He then worked as a residential television repair technician during 2010-2012. In mid-2012, he relocated to his state of current residence and worked as an electronics technician for a company in the defense industry. Beginning in 2016, he owned a junk hauling and removal business, which operated as a franchise of a nationwide company. His business closed in about mid-2018, when he returned to working in the defense industry.

The SOR alleges a history of financial problems consisting of nine delinquent accounts in amounts ranging from \$1,001 to \$9,478 for a total of about \$46,432. Two are collection accounts and seven are charged-off accounts. He disclosed a number of delinquent financial accounts in his security clearance application. (Exhibit 3 at Section 26) He admitted eight of the nine debts in his answer to the SOR. In addition to his admissions, the nine delinquent accounts in the SOR are established by a February 23, 2021 credit report. (Exhibit 7)

During his 2020 background investigation, Applicant attributed his financial problems or difficulties to a business failure. (Exhibit 4 at 6-7) He explained that his junk hauling and removal business was a franchise of a nationwide company, and various problems with the franchiser resulted in his business becoming unprofitable, leading to closure of his business in 2018. He did not provide supporting documentation concerning the business failure.

In his answer to the SOR, Applicant claimed to be making payments to various creditors and thereby reducing outstanding balances. He did not provide documentation in support of his claim. Likewise, he did not take advantage of the opportunity to provide supporting documentation in reply to the FORM. Given these circumstances, I find that the nine delinquent accounts in the SOR are wholly unresolved.

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 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

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

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 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 or difficulties that is sufficient to raise a security concern under Guideline F. Substantial evidence shows Applicant has more than \$45,000 in collection or charged-off accounts, which is not a minor or trivial amount. The disqualifying conditions noted above apply.

An applicant lives in the real world and can expect real-world problems. The security clearance process recognizes that bad things can happen to good people and has a certain tolerance for the possibility of human error and honest mistakes. But an applicant is still expected to keep their house in reasonable order. In financial cases, keeping their house in order includes providing a reasonable amount of documentation in support of their case in order to show whatever steps and remedial actions they are taking to resolve their financial problems. The security clearance process, like other large bureaucratic institutions such as banks, hospitals, and insurance companies, does not run on word-of-mouth. It runs on documentation.

Applicant has not sufficiently explained, extenuated, or mitigated his history of financial problems, which are unresolved and ongoing. I have reviewed the mitigating conditions under Guideline F and conclude none are fully applicable. In particular, the mitigating condition at AG ¶ 20(b), concerning circumstances largely beyond one's

control, does not fully apply. Certainly, the business failure in 2018 was a circumstance largely beyond his control. Nevertheless, he has not acted responsibly under the circumstances. Although his claims seem plausible on their face, he has not provided supporting documentation to establish his claims. Accordingly, he does not receive the benefit of mitigation under AG ¶ 20(b) or any of the other mitigating conditions under AG ¶ 20.

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. In doing so, I gave weight to his 20 years of honorable military service for which I have respect and appreciation. 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 -- i:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. National security eligibility denied.

Michael H. Leonard
Administrative Judge