



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



In the matter of:)
)
-----) ISCR Case No. 20-02418
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

08/02/2021

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 March 4, 2020. (Exhibit 2) This document is commonly known as a security clearance application. He provided additional information when interviewed during a 2020 background investigation. (Exhibit 7) Thereafter, on February 19, 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 21, 2021. He admitted the delinquent accounts alleged in the SOR; he provided brief explanatory remarks in a one-page memorandum; and he provided one page of supporting documentation. He requested a decision based on the written record in lieu of a hearing before an administrative judge.

On May 17, 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 25, 2021. He did not reply to the FORM. The case was assigned to me July 28, 2021.

Findings of Fact

Applicant is a 65-year-old employee who is seeking eligibility for access to classified information for a job with a federal contractor. He is married with three adult children. He and his spouse have lived at the same residence since 1990. His educational history includes a diploma from an electronics school awarded in 1986.

Applicant's employment history includes military service (inactive reserve) with the U.S. Air Force during 1973-1974 and 1975-1979. He had a full-time job as a test engineer from 1999 to 2008. In mid-2008, he began a period of self-employment when he operated a photography business. He ran that business for about six years until he closed the business. He voluntarily dissolved the corporate form of his business in December 2013. (Attachment 1 to Answer) He had a full-time job as a driver from April 2014 to March 2015. He had a full-time job as a test technician for several months during 2015. He had a full-time job as test engineer from July 2015 to at least March 2020.

The SOR alleges a history of financial problems consisting of 13 delinquent accounts in amounts ranging from \$1,094 to \$11,004 for a total of about \$66,948. The delinquent accounts consist of two unpaid judgments, seven collection accounts, and four charged-off accounts. He disclosed a single delinquent financial account in his security clearance application. (Exhibit 2 at Section 26)

In addition to Applicant's admissions in his answer to the SOR, the collection and charged-off accounts are established by a March 25, 2020 credit report. (Exhibit 5) The two unpaid judgments are established by court records, which show the judgments were taken in 2016 and 2017 against Applicant individually as well as against his photography business in one instance. (Exhibits 3 and 4) A more recent May 8, 2021 credit report shows that the accounts remain delinquent other than a \$1,348 medical collection account (SOR ¶ 1.I), which was paid in May 2021. (Exhibit 6)

Applicant attributed his financial problems or difficulties to a business failure. (Answer; Exhibit 7) He asserted in his answer to the SOR that several of the debts

belong to his photography business, which operated as an S corporation, and therefore he was not personally responsible for the indebtedness. He also claimed that he was still trying to repay the debts although he has limited liability. Other than the document showing dissolution of his photography business in December 2013, he did not present documentation to show the debts were incurred by his business or that his business was solely liable for the debts. As I read the two credit reports, the collection and charged-off accounts are individual accounts as well as a joint account in one instance. (Exhibits 5 and 6) Likewise, he did not present documentation in support of his claim that he has made payments on the debts. Given these circumstances, I find that 12 of the 13 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

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).

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 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 \$65,000 in unpaid judgments, collection accounts, and 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.

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 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 2013 was a circumstance largely beyond his control. Nevertheless, he has not acted responsibly under the circumstances. First, more than five years have passed since the business failure in 2013. He has had a reasonable amount of time to address his indebtedness in a comprehensive fashion, such as settlement agreements, repayment arrangements, or perhaps bankruptcy. Second, although his claims seem plausible, he has not provided supporting documentation to establish his claims of corporate indebtedness or proof of payment. 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 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 -- k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	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