



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 20-00037
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: *Pro se*

11/24/2021

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. He did not intentionally provide false information on a security clearance application. 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, in February 2019. (Exhibit 5) The automated version of the SF 86 is the e-QIP. The SF 86 is commonly known as a security clearance application.

Applicant was interviewed during the course of a 2019 background investigation. (Exhibit 10) Thereafter, on March 9, 2020, after reviewing the available information, the DoD 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 in form and purpose to a complaint, which is the initial pleading that starts a civil action; in some states this pleading is known as a petition; and in criminal law it is a formal charge accusing a person of an offense. Here, the SOR detailed the factual reasons for the action under the security guidelines known as Guideline F for financial considerations and Guideline E for personal conduct.

Applicant answered the SOR in April 2020 and again in January 2021. He included numerous documents with the answers. He requested a decision based on the written record in lieu of a hearing before an administrative judge.

On April 21, 2021, Department Counsel submitted a file of relevant material (FORM). It consists of Department Counsel's written brief and supporting documentation. The FORM was mailed to Applicant, who received it May 6, 2021. He did not reply to the FORM.

The case was initially assigned to me August 3, 2021, but processing of the case stopped on or about August 9, 2021, due to a loss of jurisdiction as he was no longer sponsored by an employer. The situation changed on about September 16, 2021, when the case was reopened, and it was assigned to me October 8, 2021.

Findings of Fact

Applicant is a 64-year-old employee who is seeking eligibility for access to classified information for his job as a security officer for a shipbuilding company. He has been so employed since July 2018. He has been married since 1992. He and his spouse have had the same residence since 1993. His educational background includes a high school diploma. He has no military service.

Applicant previously worked as a security officer for his current employer from 1990 to about March 2016, when he was terminated due to inattention on the job. He then worked as an Uber driver from June 2016 to July 2017. He next worked as a security officer from July 2017 to July 2018, when he began his current employment. His security clearance application shows he has held a security clearance in the past. (Exhibit 5 at Section 25)

The SOR alleges a history of financial problems consisting of five delinquent accounts in amounts ranging from \$64 to \$73,687 for a total of about \$82,393. The delinquent accounts consist of two collection accounts and three charged-off accounts. The five delinquent accounts are established by documentary evidence included in Department Counsel's FORM. (Exhibits 6 and 7). Applicant did not disclose any delinquent financial accounts, or any other derogatory financial matters, in his 2019 security clearance application. (Exhibit 5 at Section 26) The delinquent accounts are discussed below.

By far the largest delinquency is a \$73,687 charged-off account in SOR ¶ 1.a. Two credit reports describe the account as a home equity line of credit, which was opened in December 2005, and charged off in December 2017. (Exhibits 6 and 7) In his answers to the SOR, Applicant stated that he had entered into a repayment arrangement with a law firm to pay \$800 monthly beginning in April 2019, and he presented documentary proof of an \$800 payment in March 2020. In his January 2021 answer to the SOR, he stated that he continues to make the \$800 monthly payment, and the current balance was \$58,887. He did not present proof of payment from the law firm or the original creditor (a large bank) to confirm the payment arrangement or the current balance. I find this account is unresolved.

The second largest delinquency is a \$7,080 medical collection account in SOR ¶ 1.b. The March 2019 credit report shows the account is held by a collection agency. (Exhibit 7) In his answers to the SOR, Applicant stated that he had entered into a repayment arrangement to pay \$300 monthly beginning in April 2020, and the current balance is \$5,880. He did not present proof of payment from the current or original creditor to confirm the payment arrangement or the current balance. I find this account is unresolved.

The third delinquency is a \$1,304 charged-off account in SOR ¶ 1.c. The September 2019 credit report shows the debt stems from a credit card account. (Exhibit 6) In his answers to the SOR, Applicant presented proof of payment as follows: (1) a \$300 one-time automatic payment in September 2016; (2) a \$351 payment via money order in September 2014; and (3) a \$351 payment via money order in July 2014. The three payments total \$1,002. In his January 2021 answer to the SOR, he stated that the account was paid in full as of that day, but he did not present proof of payment from the creditor. I find this account is partially but not fully resolved.

The fourth delinquency is a \$258 charged-off account in SOR ¶ 1.d. In his answers to the SOR, Applicant presented proof of payment made in November 2019. I find this account is resolved.

The fifth delinquency is a \$64 medical collection account in SOR ¶ 1.e. In his answers to the SOR, Applicant stated that he paid this debt in November 2016. The debt appears in the March 2019 credit report, but not in the September 2019 credit report. (Exhibits 7 and 6, respectively) He did not present documentary proof of payment. Although the debt is minor, I find it is unresolved.

In addition to the five delinquencies in the SOR, Applicant settled in full a \$890 charged-off revolving account with a bank in April 2019. (Answers to SOR; Exhibit 10) There is also documentation showing Applicant satisfied two money judgments taken by creditors. (Exhibits 8 and 9) The first judgment was obtained in May 2018 for \$1,863 and satisfied in May 2020. The second was obtained in November 2018 for \$1,517 and satisfied in July 2019. Because these three matters were not included in the SOR, I have not considered them as disqualifying matters. But I have considered them under the whole-person concept, as evidence of Applicant's history of financial problems, and as mitigating evidence favorable to Applicant (e.g., repayment of delinquent accounts).

Applicant has not directly addressed his nondisclosure of delinquent debts in response to the relevant questions on his security clearance application. During his background investigation in 2019, he indicated that his overall financial situation was stable as he was back to making money and paying bills. (Exhibit 10) He did not volunteer any information when given the opportunity to disclose any financial problems. But when confronted with a number of delinquent accounts, he agreed to them and discussed those matters. The background investigation does not show that he admitted deliberately or intentionally omitting or concealing his financial problems when he completed the security clearance application.

In the same background investigation, Applicant attributed his financial problems and his inability to pay bills to his job loss (via termination) at the shipyard in March 2016. (Exhibit 10)

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

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).

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 E, personal conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about a person's reliability, trustworthiness, and ability to protect classified or sensitive information. The concern is stated fully in AG ¶ 15.

In analyzing the facts of this case, I have considered the following disqualifying condition as most pertinent:

AG ¶ 16(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not disclose delinquent debts when completing his February 2019 security clearance application. It's clear to see that Applicant had delinquent debts that he should have disclosed. But it's not so clear to see what was in his mind at that time. Given the evidence before me, I am not persuaded that his nondisclosure was a deliberate or intentional omission, concealment, or falsification of his financial history. This matter is decided for Applicant.

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.

⁶ Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15

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 \$80,000 in 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, such as a job loss. 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 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, universities, 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 apply. Certainly, the job loss in 2016 was a large factor in his financial problems, but the job loss occurred when he was terminated for cause as opposed to a job layoff beyond his control. Second, although his claims seem plausible, he has not provided enough supporting documentation to establish his claims of proof of payment made to his various creditors. Accordingly, he does not receive the benefit of mitigation under AG ¶ 20(d).

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge