



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



In the matter of:)	
)	
-----)	ISCR Case No. 19-02902
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric C. Price, Esq., Department Counsel
For Applicant: *Pro se*

04/05/2021

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 sufficient to explain, extenuate, or mitigate his history of financial problems that were incurred when he suffered a heart attack, which was further complicated when his medical insurance company declined to pay his claim. He’s doing what he can to address a large amount of medical debt. Accordingly, this case is decided for 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 June 16, 2019. (Exhibit 3) This document is commonly known as a security clearance application. Thereafter, on March 23, 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 April 10, 2020. He admitted the four SOR allegations and provided explanatory remarks. Altogether, his answer consists of 28 pages, which includes 24 pages of supporting documents that will be considered as evidence. He requested a decision based on the written record in lieu of a hearing.

On June 30, 2020, Department Counsel submitted a file of relevant material (FORM), which consists of Department Counsel's written brief and supporting documentation, some of which are identified as evidentiary exhibits. The FORM was mailed to Applicant, who received it on July 15, 2020. He did not reply within 30 days of receipt of the FORM. The case was assigned to me on September 29, 2020.

Upon review of the case, I exercised my discretion to reopen the evidentiary record to allow Applicant to submit additional documentation concerning his repayment efforts. I outlined the matter in an October 6, 2020 e-mail, which was addressed to both Applicant and Department Counsel. My e-mail is made part of the record as Appellate Exhibit I. The record was left open until November 6, 2020.

Applicant timely replied by e-mail on November 2, 2020, and his response included 11 attachments. In his e-mail, Applicant provided a short explanation concerning the four SOR allegations. Department Counsel replied by e-mail on November 3, 2020, lodging no objections to consideration of Applicant's 11 attachments. In addition, Department Counsel provided an attachment-by-attachment analysis. Applicant's e-mail and 11 attachments are admitted as Exhibit A. Department Counsel's response thereto is made part of the record as Appellate Exhibit II.

Findings of Fact

Applicant is a 55-year-old employee who requires eligibility for access to classified information for his job with a federal contractor. He works as a system administrator for a company in the defense industry. He has been so employed since January 2008. He has not held a security clearance in the past according to his security clearance application. (Exhibit 3 at Section 25) His first marriage ended in divorce. He married for the second time in 1996. He has three children, two adult daughters and a minor son. His education history shows he received a high school diploma in 1984. He has lived at the same residential address since 2004.

The SOR alleges and Applicant admits a history of financial problems consisting of four delinquent accounts in amounts of \$842, \$65,291, \$186, and \$826 for a total of about \$67,145. In addition to his admissions, the delinquent accounts are established by admissible evidence. (Exhibits 3, 4, 5, and 6)

Applicant disclosed the largest of the debts when he completed his security clearance application. (Exhibit 3 at Section 26) In February 2015 he suffered a heart attack during work hours and was rushed to a nearby Army medical center for

treatment. Although he had medical insurance (Answer at 4), he was registered as a civilian patient without insurance.

Applicant was unaware of the mistake until about March 27, 2015, when the Department of the Treasury notified him of the medical indebtedness. (Answer at 10) The collection letter indicated that he owed \$39,473, and that collection action would continue unless he made payment within ten days in the amount of \$50,525, which included all applicable fees, interest, and penalties.

Applicant challenged the amount of the indebtedness through a hearing process with the Treasury Department. He filed a hearing request on April 13, 2015, in response to a second letter indicating an intention to initiate an administrative wage garnishment. (Answer at 3, 5)

Applicant also contacted his health insurer seeking their assistance. They requested he provide an itemized bill from the Army medical center. He submitted a claim to his insurer on June 15, 2015, which included the documentation he was able to obtain from the Army medical center. (Answer at 11-27) He reports that his insurer deemed his submission was insufficient and denied the claim.

In the meantime, Applicant's April 2015 request for a hearing with the relevant office of the Treasury Department stopped or at least delayed the wage garnishment action. Applicant stated he "was foolish in believing the problem had gone away." (Answer at 3) The problem had not gone away but it did lie dormant until November 2019 when the Treasury Department issued a wage garnishment order with a balance due of \$63,891. (Answer at 6-10) A July 2019 credit report indicates a balance due of \$65,291. (Exhibit 5) A June 2020 credit report indicates a balance due of \$62,403. (Exhibit 6) The current status of this account and the other three delinquent accounts is addressed below.

The debt in SOR ¶ 1.a concerns an \$842 collection account owed to the Department of the Treasury. In his answer to the SOR and his November 2020 e-mail, Applicant explained that he paid the debt in April 2020 but lost the receipt. The debt is reported as delinquent in the July 2019 credit report but not the more recent June 2020 credit report. (Exhibits 5 and 6) It is also reported in an extract of Applicant's Equifax credit report of April 2020. (Exhibit A at Attachment 4). Of note, the June 2020 credit report shows a past-due balance of \$0. (Exhibit 6 at 2-3) He also submitted a June 2015 collection letter with handwritten notes or annotations reflecting efforts to pay the account. (Exhibit A at Attachment 3) Taken together, the evidence is sufficient to find that Applicant paid the debt.

The debt in SOR ¶ 1.b concerns the largest debt, the more than \$60,000 collection account for the necessary medical care and treatment Applicant received at the Army medical center. This account is being repaid via the administrative garnishment order issued by the Treasury Department. He submitted documentation showing repayment of the debt via the tools typically used by the federal government in collection cases. He provided four earnings statements from his employer showing a

deduction of \$272.86 for garnishment once every two weeks. (Exhibit A at Attachments 8, 9, 10, and 11) Year to date, as of October 23, 2020, the amount of \$6,281.35 had been garnished from his wages. (Exhibit A at Attachment 11) In addition to the biweekly wage garnishment, he provided documentation showing that in October 2020 a federal income tax refund for tax year 2019 was applied to this debt in the amount of \$1,572.05. (Exhibit A at Attachments 1-2)

The debt in SOR ¶ 1.c concerns a \$186 medical collection account. In his answer to the SOR and his November 2020 e-mail, Applicant explained he paid or settled this account. He provided documentation showing he settled the account for the lesser amount of \$121 with the current account holder in April 2020. (Exhibit A at Attachments 5 and 6) Consistent with his representation, the debt does not appear in the June 2020 credit report provided by Department Counsel. (Exhibit 6) Taken together, the evidence is sufficient to find that Applicant settled the debt.

The debt in SOR ¶ 1.d concerns an \$826 collection account placed by a bank that is a major credit card company for many U.S. retail stores. Applicant provided documentation that he settled the account for the lesser amount of \$578 with the current account holder in about November 2020. (Exhibit A at Attachment 7)

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

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).

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;

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

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce, or separations, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

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

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 to this case.

Turning to the matters in mitigation, I note that the largest debt here is still in collection and is being repaid through an administrative garnishment order issued by the Department of the Treasury. This size of the debt dwarfs the other three debts in the SOR, it will take time to repay at the biweekly rate of \$279, and it was no doubt the primary reason for issuance of the SOR.

Applicant has sufficiently explained, extenuated, or mitigated this debt by showing it resulted from two circumstances largely beyond his control. The first was the heart attack followed by the billing mistake at the Army medical center that resulted in him being classified as a non-insured civilian patient when he in fact had medical insurance. Obviously, Applicant could not pick the time and place for his heart attack nor the medical facility where he was treated. The second was his insurer's refusal to pay his claim for the necessary medical treatment and care received at the Army medical center. A double whammy. Moreover, he acted responsibly under the circumstances. After learning about the issue in March 2015, about 45 days after his heart attack, he then contacted both the Treasury Department and his insurer in an effort to resolve it. He subsequently took his foot off the gas pedal when the Treasury Department apparently did not timely respond to his request for a hearing and he should have been more diligent in that regard, as he acknowledged being foolish thinking the problem had went away. But given the totality of the circumstances, he did not conduct himself irresponsibly. Accordingly, the mitigating condition at AG ¶ 20(b) applies in Applicant's favor.

Applicant has made "a good-faith effort" to resolve the other three minor debts in the SOR, which together amount to less than \$2,000. He provided sufficient (although not perfect) documentation to establish that he paid or settled those three accounts. Perhaps he could have acted with more diligence or speed, but it must be acknowledged that he resolved those three debts while at the same time being subject to the wage garnishment order. Accordingly, the mitigating condition at AG ¶ 20(d) applies in Applicant's favor.

Cases such as this one are a good reminder for us all. Job loss, divorce, a string of failed investments, being a victim of fraud, getting hit by a risk you didn't see coming such as a medical emergency – to people in good financial shape these tend to be viewed as things that happen "to other people." **But it can happen to you.** And given enough time, at least one likely will. No doubt some people are more susceptible than others, but few are exempt from being humbled.

Following *Egan* and the clearly consistent standard, I have no 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 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: For Applicant

Subparagraphs 1.a -- 1.d: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility granted.

Michael H. Leonard
Administrative Judge