



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



In the matter of:	)	
	)	
=====	)	ISCR Case No. 20-03200
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

01/25/2022

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. Applicant failed to mitigate security concerns raised by his problematic financial history and his personal conduct. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 25, 2020. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on December 20, 2020, detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on January 3, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On March 30, 2021, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. Applicant was sent the FORM on April 5, 2021, and he received the FORM on April 12, 2021. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the answer (Items 1 and 3, respectively) are the pleadings in this case. Items 2 and 4 through 6 are admitted without objection. The case was assigned to me on July 16, 2021.

### **Findings of Fact**

Applicant is 41 years old. He is a high school graduate and has no children. Since February 2020, he has worked for a defense contractor. (Item 4.)

Under Guideline F, the SOR alleged that Applicant has eight delinquent debts totaling approximately \$245,284. Under Guideline E, the SOR alleged that Applicant deliberately failed to disclose those debts in his security clearance application. (Item 1.) Applicant admitted all allegations in the SOR. (Item 3.)

More specifically, as to his admitted delinquent debts, Applicant answered that: "I admit to this record, and my action was unintentional, did not realize these records [of delinquencies] were reflected in my credit report." He made the same response to the Guideline E allegations of failure to disclose his delinquent debts. To those allegations, Applicant added: "I was in a tumultuous toxic relationship . . . [that] finally ended with a divorce . . . ." He attached the divorce decree and documents showing that he resolved SOR ¶ 1.g. (\$218,652) through a short sale. Applicant discussed some of his SOR debts during his April 17, 2020 personal subject interview. (Item 5.) Applicant also attached to his answer letters to creditors dated December 28, 2020, disputing six of the eight SOR debts. (Item 3.) As to the Guideline E allegations, Applicant answered: "[I] should have responded a 'Yes' in hindsight, if I had known these items showed up in my credit report and that they were going to be of an impact." (Item 3.) The SOR debts are currently delinquent. (Item 6.)

### **Law and Policies**

It is well-established law that no one has a right to a security clearance. 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." *Department of 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 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

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. A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information. An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information. ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004). The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted. An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven. In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. Directive, ¶ E3.1.14; Directive, Enclosure 3, ¶ E3.1.15.

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence. *Egan*, 484 U.S. at 531. The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard. ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

## **Discussion**

### **Guideline F - Financial Considerations**

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. AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

The overall concern is:

Failure 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. AG ¶ 18.

The concern is broader than the possibility that a person might knowingly compromise classified 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 information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions or factors:

AG ¶ 19(a) inability to satisfy debts;

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

AG ¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

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 separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

The evidence, including Applicant's admissions, supports a conclusion that Applicant has had a problematic financial history as alleged. Facts admitted by an applicant in an answer to a SOR require no further proof by the Government. ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995) ("any admissions [applicant] made to the SOR allegations . . . relieve Department Counsel of its burden of proof"); ISCR Case No. 94-0569 at 4 and n.1 (App. Bd. Mar. 30, 1995) ("[a]n applicant's admissions, whether testimonial or written, can provide a legal basis for an Administrative Judge's findings"). The record raises security concerns under disqualifying factors AG ¶¶ 19(a) and (c).

The next inquiry is whether any potentially mitigating conditions apply. Applicant's delinquent debts are numerous and persist to this day. AG ¶ 20(a) does not apply.

Applicant alludes to his toxic relationship and divorce as contributing to his financial straits. The Government argues that this contention is too vague to support a mitigating factor in Applicant's favor. On the one hand, that is a fair point. On the other hand, separations and divorces are fertile grounds for sowing financial hardship between the parties. AG ¶ 20(b) expressly recognizes divorce and separation as factors largely beyond an applicant's control in financial cases. AG ¶ 20(b)'s first prong is satisfied.

That does not, however, end the inquiry. Faced with adverse circumstances, Applicant must show that he acted responsibly to address the financial adversity he confronted. In this case, Applicant wrote letters disputing six of the SOR debts. Those letters were written on December 28, 2020, merely a week after the SOR was issued to Applicant on December 20, 2020. Applicant's dispute letters to SOR creditors were undoubtedly prompted by his receipt of the SOR. Post-SOR remedial efforts by an applicant are often viewed as not being in good faith. The timing of such efforts undercuts the weight of remedial actions. ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 8 26, 2017). And so it is here. AG ¶ 20(b) does not apply.

### **Guideline E - Personal Conduct**

In assessing an allegation of deliberate falsification, I consider not only the allegation and applicant's answer but all relevant circumstances. AG ¶¶ 2(d)(1)-(9) and

2(f)(1)-(6) (explaining the whole person concept). Under Guideline E for personal conduct, the concern is that “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability classified or sensitive information.” A statement is false or dishonest when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if, for example, the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, reasonably did not know the information, or genuinely thought the information did not need to be reported.

The record evidence on Applicant’s financial condition and his personal conduct raises doubts about Applicant’s reliability, trustworthiness, good judgment, and ability to protect classified 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 gave due consideration to the whole-person concept. Accordingly, I conclude that Applicant 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**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.f and 1.h:	Against Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2, Guideline E	Against Applicant
Subparagraph 2.a.	Against Applicant

### **Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas  
Administrative Judge

