



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



In the matter of:)
)
-----) ISCR Case No. 21-01513
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

02/08/2022

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. He did not present sufficient documentary evidence to explain, extenuate, or mitigate his history of financial problems, which is ongoing. 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 October 2020. (Exhibit 3) 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 2020-2021 background investigation. (Exhibit 4) Thereafter, on September 3, 2021, 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 guideline known as Guideline F for financial considerations.

Applicant answered the SOR on September 13, 2021. He admitted the factual allegations in the SOR and provided brief explanations. He requested a decision based on the written record in lieu of a hearing before an administrative judge.

On October 11, 2021, Department Counsel submitted a file of relevant material (FORM) in support of their case. It consists of Department Counsel's written brief and supporting documentation. The FORM was received by Applicant, via his facility security officer, on October 25, 2021. He did not submit a written response to the FORM. The case was received in the Washington Hearing Office on December 16, 2021, and assigned to me February 3, 2022.

Findings of Fact

Applicant is a 35-year-old employee who is seeking eligibility for access to classified information for his job as a software engineer for a company in the defense industry. He has been so employed since January 2020. (Exhibit 3) His educational background includes a high school diploma awarded in 2004 and a bachelor's degree in 2009. He married in 2008 and divorced in 2012. His first marriage produced one child, but Applicant stated that his parental rights to the child were terminated in the divorce. (Exhibit 3 at 21) He married for the second time in 2017, and he and his spouse have a young child.

Applicant has been continuously employed in the field of information technology since January 2012. (Exhibit 3) He was unemployed for about three months during 2011-2012 due to a relocation from Alaska to the continental United States. He has lived in his current state of residence since late 2011 or early 2012.

The SOR alleges a history of financial problems consisting of four federal student loans in collection in amounts ranging from \$3,840 to \$9,816 for a total of about \$28,000, and two minor medical collection accounts for \$122 and \$41. In addition to Applicant's admissions in his answer to the SOR, the six collection accounts are established by credit reports from November 2020 and April 2021. (Exhibits 6 and 5, respectively)

In his security clearance application, Applicant disclosed the student loans. (Exhibit 3 at 41-42) He estimated owing a total of \$70,000; he explained he defaulted on the loans because of financial hardship incurred due to divorce and the relocation to and from Alaska; and he stated that he had completed a loan-rehabilitation program and

was making \$450 monthly payments. He did not provide documentation showing completion of a loan-rehabilitation program or the monthly payments.

In his answer to the SOR, Applicant stated the following concerning the student loans in collection: “My wife’s job was eliminated due to COVID and we fell behind on some bills. We have been catching up but these student loans are the last of a long list and were the lowest priority. We will be caught up on everything eventually.” He has not provided documentation of a payment history for the loans. I specifically find the four student loans in collection are not paid, settled, in a repayment agreement, cancelled, forgiven, or otherwise resolved.

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 about \$28,000 in collection for four student loan accounts. The disqualifying conditions noted above apply.

An applicant lives in the real world and can expect real-world problems, such as divorce, unemployment, or some other setback. The security clearance process recognizes that bad things may 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.

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

Applicant has not sufficiently explained, extenuated, or mitigated his history of financial problems. I have reviewed the mitigating conditions under Guideline F and conclude none are fully applicable. With that said, I am not concerned about the two minor medical collection accounts for less than \$200 in total. Viewed individually or together with the student loan accounts, the medical collection accounts are so minor as to fall within the maxim of *de minimis*. The two medical collection accounts are resolved in Applicant's favor.

The same cannot be said for the \$28,000 in collection for the four student loan accounts. Applicant has not provided documentation to establish the current status of the accounts or a recent record of payment. I have considered the circumstances of Applicant's financial hardship due to the relocations to and from Alaska, the brief period of unemployment, and the divorce. Although not minor matters, those events occurred a number of years ago. He has been continuously employed in the continental United States since January 2012, a period of about 10 years. He has had sufficient time and opportunity to initiate a good-faith effort to resolve the student loans, but he relegated the indebtedness to a low priority. I also considered Applicant's statement concerning his spouse's job loss due to the fallout from COVID, but he did not provide specific information, and I so do not give that information substantial weight.

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
Subparagraphs 1.a – 1.d:	Against Applicant
Subparagraphs 1.e – 1.f:	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