



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



In the matter of:)
)
-----) ISCR Case No. 21-02089
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

03/23/2022

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 documentary evidence to explain, extenuate, or mitigate his history of financial problems. He did not intentionally or deliberately 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 July 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 2021 background investigation. (Exhibit 7) Thereafter, on October 15, 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 guidelines known as Guideline F for financial considerations and Guideline E for personal conduct.

Applicant answered the SOR on November 7, 2021. His answers were mixed, with admissions and denials. He also provided brief, handwritten explanations for his answers. In addition, appended to his answer is a one-page document offered as proof of payment for the debt alleged in SOR ¶ 1.f. He requested a decision based on the written record in lieu of a hearing before an administrative judge.

On January 5, 2022, Department Counsel submitted a file of relevant material (FORM). It consists of Department Counsel's written brief and supporting documentation. The FORM was received by Applicant on January 19, 2022. He did not submit a written response to the FORM within the allotted time. The case was received in the Washington Hearing Office on March 3, 2022, and assigned to me March 17, 2022.

Findings of Fact

Applicant is a 36-year-old employee who is seeking eligibility for access to classified information for his job as a technician for a company in the defense industry. He has been employed by the same company since 2012. His educational background includes a high school diploma awarded in 2003 and some college without completing a degree program. He married in 2009 and divorced in 2016. He has one minor child, a son, from the marriage. He is obligated to pay child support at the rate of \$1,400 monthly. (Exhibit 7) He has lived with a cohabitant girlfriend since early 2019.

Applicant's employment history includes honorable military service. He served in the Army National Guard, in an active reserve status, during 2004-2009. He also served on active duty in the U.S. Army during 2009-2012. He was unemployed for about four months in 2012 before beginning his current employment.

The SOR alleges a history of financial problems consisting of eight delinquent accounts in amounts ranging from \$71 to \$19,386 for a total of about \$44,915. The indebtedness is established by Applicant's admissions and the record evidence except as otherwise noted below. (Exhibits 4, 5, 6, and 7)

The debt alleged in SOR ¶ 1.a is a \$9,575 charged-off account. A June 2021 credit report reflects this debt is from an individual account. (Exhibit 4) Applicant admitted this matter in his answer to the SOR. During the background investigation he stated the debt stemmed from a line of credit or a credit card he used to pay legal

expenses for his divorce. (Exhibit 7) He explained he did not make payments on the account because he lacked the money to do so. This debt remains unresolved.

The debt alleged in SOR ¶ 1.b is a \$4,632 collection account. A June 2021 credit report reflects this debt is from an individual account placed for collection. (Exhibit 4) Applicant admitted this matter in his answer to the SOR. During the background investigation he stated the debt stemmed from a loan he obtained to buy a motorcycle. (Exhibit 7) He explained he stopped making payments on the account because he lacked the funds to do so due to the previously mentioned legal expenses. This debt remains unresolved.

The debt alleged in SOR ¶ 1.c is a \$388 charged-off account. A June 2021 credit report reflects this debt is from a joint contract. (Exhibit 4) Applicant stated in his answer to the SOR that the debt was due to a personal dispute that has been paid. During the background investigation he stated the account stemmed from an auto insurance account he cosigned for his parents. (Exhibit 7) He explained he made no payments on the account as his parents said they would pay it. Although he did not submit documentary proof of payment, given his explanation concerning joint responsibility for the account I find the debt is resolved.

The debt alleged in SOR ¶ 1.d is a \$299 collection account. A June 2021 credit report reflects this debt is from an individual account placed for collection. (Exhibit 4) Applicant admitted this matter in his answer to the SOR and said it was in disagreement or dispute. The debt was not addressed during the background investigation. (Exhibit 7) The debt remains unresolved.

The debt alleged in SOR ¶ 1.e is a \$71 collection account. A June 2021 credit report reflects this debt is from an individual account placed for collection. (Exhibit 4) Applicant admitted this matter in his answer to the SOR. During the background investigation he stated the account stemmed from cable or Internet service. (Exhibit 7) He explained that he returned the equipment to the provider and he is disputing the account. He has not provided documentation in support of his claim. This debt remains unresolved.

The debt alleged in SOR ¶ 1.f is for a balance due of \$10,564 after repossession of an automobile. A June 2021 credit report reflects a joint contract as well as a voluntary surrender of the collateral. (Exhibit 4) Applicant admitted this matter in his answer to the SOR and explained his former spouse had paid the account. During the background investigation he stated the account stemmed from an auto loan obtained in 2012 or 2013. (Exhibit 7) He explained that he stopped making payments on the loan while going through the divorce, he notified the creditor of his inability to pay, the vehicle was recovered by the creditor, and he believes the balance due is based on a deficiency balance after sale. Appended to his answer is documentary proof of payment, apparently from his former spouse judging the e-mail address, in the amount of \$15,391 payable to the creditor alleged in SOR ¶ 1.f. The difference in the amounts is probably due to late fees, legal fees, or compound interest. This debt is resolved.

The debt alleged in SOR ¶ 1.g is a \$19,386 charged-off account. Credit reports from May 2019 and September 2020 show Applicant was listed as an authorized user and not a party responsible for the account. (Exhibits 6 and 5, respectively) The debt is not reported in the June 2021 credit report. (Exhibit 4) Applicant denied this debt in his answer to the SOR. During the background investigation he stated that the account belonged to his former spouse and that he never had an account with this particular bank. (Exhibit 7) Department Counsel, to her credit, conceded Applicant was an authorized user on this account and therefore not legally responsible for repayment of the debt. (Brief at page 2, n. 1) The allegation that Applicant owes the debt in SOR ¶ 1.g is unproven.

The allegation in SOR ¶ 1.h is a bit odd because it does not allege a sum certain of indebtedness. Instead, it alleges Applicant is “indebted” to a mortgage lender on a loan that went into foreclosure. Credit reports from 2021, 2020, and 2019 reflect the account was for a real estate mortgage and was a joint contract. (Exhibits 4, 5, and 6, respectively) Applicant admitted this matter in his answer to the SOR; he explained he moved out of the marital home during the divorce and paid his former spouse his portion of the mortgage loan payment; and he later discovered that his former spouse did not pay the mortgage loan and used the money for other purposes leading to the foreclosure. He provided a similar explanation during the background investigation. (Exhibit 7) All three credit reports reflect a \$0 balance after a foreclosure (Exhibits 4, 5, and 6). The \$0 balance is consistent with the fact that the foreclosed residential real estate was located in a jurisdiction where the state law provides for only non-recourse mortgage loans. The allegation in SOR ¶ 1.h is resolved because Applicant is no longer indebted on the mortgage loan, but the history of non-payment, default, and foreclosure remain relevant.

Overall, Applicant explained in his answer to the SOR that his divorce harmed his finances and he was also involved in an ongoing custody battle over his son (details not otherwise specified). He noted that his continued employment was necessary for him to resolve his bad debts and pay for the legal expenses of the custody battle. He mentioned he may file for bankruptcy protection in order to obtain a fresh start.

In addition to the financial matters, the SOR alleges under Guideline E that Applicant falsified his answers to multiple questions he answered about his financial history in his security clearance application. Indeed, his answers to all financial questions in Section 26 of the SF 86 were in the negative, and he did not disclose or report any financial problems in his July 2020 security clearance application. (Exhibit 3) In his answer to the SOR, Applicant admitted incorrectly answering the questions, but explained he did so because he did not thoroughly read the questions. He provided a similar explanation during the background investigation. (Exhibit 7) He stated that he did not list any of his delinquent account information due to misreading the questionnaire and not understanding that these particular accounts were required to be listed or reported. He believed he had correctly answered the financial questions, but now realizes he did not.

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 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

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).

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

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. With that said, the findings of fact show his financial problems are not as problematic as the \$44,915 of delinquent debt alleged in the SOR may appear. First, the four accounts in SOR ¶¶ 1.a for \$9,757, 1.b for \$4,632, 1.d for \$299, and 1.e for \$71 are unresolved. Second, the three accounts in SOR ¶¶ 1.c for \$388, 1.f for \$10,564, and 1.g for \$19,386 are resolved or unproven. And third, the mortgage loan account in SOR ¶ 1.h is resolved with a finding of no longer indebted due to the unequivocal evidence of a \$0 balance reflected in all three credit reports in the record evidence. Moreover, the foreclosure appears to be directly related to his divorce. In summary, Applicant owes about \$14,759 in total for four delinquent accounts, and he has taken little to no remedial action on those debts. The disqualifying conditions noted above apply.

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. I gave due consideration to his divorce but note it occurred more than five years ago in 2016. Given his full-time employment in the defense industry, he has had sufficient time and opportunity to make progress in recovering from the financial fallout from the divorce. It seems reasonable that he could have simply paid the two smaller debts of \$299 and \$71 just to get them off the books. It also seems reasonable that he could have entered into repayment agreements for the two larger debts. It appears those matters were not a priority for Applicant. I also considered his statement about the ongoing custody battle over his minor son and the associated legal expenses. I am unable to give his statement much weight because he did not provide any documentation to substantiate or corroborate his statements. In addition, what's missing here is a reasonable degree of documentation to demonstrate that he initiated a good-faith effort to resolve the four remaining delinquent accounts for nearly \$15,000 and is making reasonable progress in doing so. Accordingly, the Guideline F matter is decided against Applicant.

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 any delinquent financial accounts when completing his July 2020 security clearance application. He should have. Nevertheless, given the state of the record evidence before me, I am not persuaded that his nondisclosure was a deliberate or intentional omission, concealment, or falsification of his derogatory financial history. Accordingly, the Guideline E matter is decided for Applicant.

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, and I gave Applicant credit for his years of 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, 1.b, 1.d, 1.e:	Against Applicant
Subparagraphs 1.c, 1.f, 1.g, 1.h:	For 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