



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



In the matter of:)
)
-----) ISCR Case No. 20-03099
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

05/03/2022

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information due to a history of financial problems. He presented sufficient evidence to 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 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, in May 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 background investigation. (Exhibit 4) Thereafter, on December 7, 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 June 2021. Note, an applicant's answer must be received by DOHA within 20 days of receipt of the SOR.¹ His answers were mixed with admissions, denials, and explanations. In addition, he provided three documents relevant to the SOR allegations, and they are referred to as Attachments 1, 2, and 3. He requested a clearance decision based on the written record in lieu of a hearing.

On November 24, 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 on December 23, 2021; he received it on January 11, 2022. He did not reply to the FORM within the prescribed 30-day period. The case was assigned to me on March 22, 2022.

Findings of Fact

Applicant is a 35-year-old employee who is seeking for the first time to obtain a security clearance. He has a job as a senior material operator for a large company in the defense industry. He has been so employed since July 2019. He has had full-time employment (e.g., machine operator, machine assembly operator, final assembler) dating back to at least January 2014. He has no previous military service. He earned a high school diploma in 2005. Never married, he has one minor child, and both he and his child live with his parents.

The SOR concerns a history of financial problems consisting of six delinquent accounts in amounts ranging from \$1,966 to \$9,862 for a total amount of about \$29,990. The indebtedness consists of three charged-off accounts and three collection accounts. The six delinquent debts are established by a June 2020 credit report. (Exhibit 6)

As required, Applicant disclosed the delinquent account alleged in SOR ¶ 1.a in response to questions in Section 26 of his May 2020 security clearance application. He then incorrectly believed the debt was a \$9,500 judgment entered against him in about February 2018 for a credit card account. He explained he was working on saving money in order to negotiate a payment plan. He did not disclose other delinquent accounts or debts on his security clearance application. His nondisclosure of the five delinquent debts in SOR ¶¶ 1.b through 1.f is the basis for the falsification allegation under Guideline E.

¹ Directive, Enclosure 3, ¶¶ E3.1.4 and E3.1.5.

During the 2020 background investigation, Applicant agreed that he incorrectly reported the unpaid judgment when the debt was a \$9,862 charged-off account. (Exhibit 4) He attributed his mistake to a lack of recall about the details of the debt. In addition, upon confrontation, he did not recall six other delinquent accounts, five of which are alleged in the SOR (the sixth being a paid collection account with a \$0 balance). (Exhibit 4) He explained his lack of recall is why he did not disclose the delinquent debts when he completed his security clearance application. He also noted that he agreed with the indebtedness because he had no reason to dispute or think the information was inaccurate.

The allegation in SOR ¶ 1.a concerns a \$9,862 charged-off account. The June 2020 credit report shows it was an individual credit card account charged off in December 2017. In his answer, Applicant denied the allegation on the basis that he settled it. He also presented correspondence from the creditor's representative that the account was "settled in full" in September 2020, which was before the SOR was issued. Answer at Attachment 1.

The allegation in SOR ¶ 1.b concerns a \$7,609 collection account. The June 2020 credit report shows it was an individual account. In his answer, Applicant denied the allegation on the basis that a collection lawsuit had concluded with a dismissal with prejudice. He also presented a court filing showing that the plaintiff/creditor requested the case be dismissed with prejudice in November 2020, which is before the SOR was issued. Answer at Attachment 2.

The allegation in SOR ¶ 1.c concerns a \$5,128 collection account. The June 2020 credit report shows it was an individual account, and a narrative note states it was affected by natural disaster. In his answer, Applicant admitted the debt and stated he was working on paying it without further elaboration.

The allegation in SOR ¶ 1.d concerns a \$2,818 charged-off account. The June 2020 credit report shows it was an individual account charged off in November 2017. In his answer, Applicant admitted the debt and stated that he tried to settle the matter, but the creditor sent him an IRS Form 1099-C due to cancellation of the debt, which means the sum becomes taxable to him and required to be reported in the relevant federal income tax return. He did not present a copy of the Form 1099-C.

The allegation in SOR ¶ 1.e concerns a \$2,607 charged-off account. The June 2020 credit report shows it was an individual credit card account charged off in April 2018. In his answer, Applicant denied the allegation on the basis the account no longer had a balance due. He also presented correspondence from the creditor acknowledging receipt of final payment on the account and that no further payments were required as of June 2021, which was after the SOR was issued. Answer at Attachment 3.

The allegation in SOR ¶ 1.f concerns a \$1,966 collection account. The June 2020 credit report shows it was an individual account referred to a collection attorney. In his answer, Applicant admitted the debt and explained it was being repaid via garnishment of his wages despite his efforts to enter into a repayment agreement. The

plaintiff/creditor obtained a judgment against Applicant and a garnishment order was served on his employer in May 2021 to collect the sum of \$2,030, which means it has been in effect for nearly a year. (Exhibit 5)

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.² 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.”³ 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.⁴

The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.⁵ Substantial evidence means “evidence that a reasonable mind could accept as adequate to support a conclusion; evidence beyond a scintilla.”⁶ Substantial evidence is a lesser burden than both clear and convincing evidence and preponderance of the evidence, the latter of which is the standard applied in most civil trials. It is also a far lesser burden than evidence beyond a reasonable doubt, the norm for criminal trials.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁷ 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

² *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).

³ 484 U.S. at 531.

⁴ 484 U.S. at 531.

⁵ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁶ *Black’s Law Dictionary* 640 (Bryan A. Garner ed., 9th ed., West 2009).

⁷ 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.⁸

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 disclosed a single delinquent debt when completing his security clearance application. He incorrectly reported it as an unpaid judgment when it was an unresolved charged-off account. He did not disclose five other delinquent accounts, as alleged in SOR ¶¶ 1.b through 1.f. He should have. He denied doing so intentionally, and he explained he failed to do so due to a lack of recall. His explanation is reasonable, especially given his disclosure of the debt in SOR ¶ 1.a. Given 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.

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,

⁸ Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15.

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 that is sufficient to raise a security concern under Guideline F. The disqualifying conditions noted above apply here.

The evidence shows Applicant has made progress in resolving his past financial delinquencies. The \$5,128 collection account in SOR ¶ 1.c is unresolved, although he noted he was working on paying it. The other five delinquent accounts are resolved or in the process of being resolved. The \$9,862 charged-off account in SOR ¶ 1.a was resolved in September 2020 when it was settled in full. The \$7,609 collection account in SOR ¶ 1.b was resolved in November 2020 when the plaintiff/creditor dismissed a collection lawsuit with prejudice. Although that action is not direct evidence of payment, it is direct evidence that the plaintiff/creditor was satisfied to the point where they ended terminated their lawsuit. The \$2,818 charged-off account in SOR ¶ 1.d was resolved when the creditor cancelled the debt and provided Applicant an IRS Form 1099-C for tax purposes. Although he did not present a copy of the Form 1099, his explanation is credible, as it would be unusual for an applicant to say they received a Form 1099 if that was not case. The \$2,607 charged-off account in SOR ¶ 1.e was resolved in about June 2021 when he made the final payment. And the \$1,966 collection account in SOR ¶ 1.f is in the process of being resolved per a garnishment order initiated in about May 2021, nearly one year ago. Granted, payments per a garnishment order are not voluntary. So while he does not receive full credit in mitigation for the garnishment action, he does deserve a bit of credit; after all, he's earning the money. It is also likely that this debt has been repaid by now, but that is too speculative to rely on without supporting documentation.

Applicant did not present a perfect case in mitigation. He could have done a better job documenting his case (e.g., the missing IRS Form 1099-C). Nevertheless, taking the evidence as a whole, he presented sufficient evidence to show that he is taking reasonable steps to make a good-faith effort to repay overdue creditors or otherwise resolve debts within the meaning of the mitigating condition at AG ¶ 20(d).

Following *Egan* and the clearly consistent standard, I have no doubts 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.f:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge