



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



In the matter of:)
)
-----) ISCR Case No. 20-03658
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *Pro se*

04/27/2022

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 did not present sufficient documentary evidence to mitigate his history of financial problems. 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 January 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 July 28, 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 in September 2021. He admitted all the factual allegations made in the SOR and he provided a few, brief explanatory remarks. He did not provide supporting documentation. He also requested a clearance decision based on the written record in lieu of a hearing.

On September 29, 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, who received it January 24, 2022. He did not reply to the FORM. The case was assigned to me March 22, 2022.

Findings of Fact

Applicant is a 37-year-old employee who is seeking for the first time to obtain a security clearance. He has a job as a consultant for a company in the defense industry. He has been so employed since December 2019. He has no previous military service. His educational background includes attending college for a few months in 2014 and for a few months in 2018. Never married, he has no children.

A review of his SF 86 shows Applicant has an uneven employment history. He was unemployed for a few months before beginning his current job in 2019. Before that, he had a full-time job as a manager of a café from July 2019 to October 2019. Before that, he had a part-time job as a barista from March 2019 to June 2019. Before that, he was a self-employed driver from September 2018 to March 2019. Before that, he was unemployed from July 2018 to September 2018. And before that, he had approximately nine different jobs dating back to 2009; several of those jobs ended when he was fired or terminated; and he had multiple periods of unemployment.

The SOR concerns a history of financial problems consisting of seven delinquent accounts in amounts ranging from \$594 to \$11,130 for a total amount of about \$23,350. The indebtedness consists of five charged-off accounts and two collection accounts. He admitted the indebtedness in his answer to the SOR. In addition to his admissions, the SOR allegations are established by a September 2020 credit report. (Exhibit 6) Note, I have not considered Exhibit 5, a November 2019 credit report, because it is incomplete, consisting of only partial pages of the credit report, per the doctrine of completeness under Federal Rule of Evidence 106.

Applicant has not provided affirmative proof, via reliable documentation, that he has resolved any of the seven delinquent accounts. In particular, he has not provided

documentary proof that any of the delinquent debts were paid, settled, in a repayment agreement, disputed, cancelled, forgiven, or otherwise resolved. Concerning his answer to the SOR, he noted that he entered into repayment agreements for the three smallest debts in SOR ¶¶ 1.e, 1.f, and 1.g. But he has not provided documentation of the repayment agreements, nor has he provided proof that he has adhered to the agreements.

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 DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.⁴ Substantial evidence means “evidence that a reasonable mind could accept as adequate to support a conclusion; evidence beyond a scintilla.”⁵ 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.⁶ 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

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

⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

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.⁷

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

The evidence before me does not support a conclusion that Applicant has engaged in sufficient remedial efforts to justify a favorable clearance decision. He has not presented any documentary evidence in support of his case. His delinquent accounts for more than \$20,000 remain wholly unresolved. None of the mitigating conditions listed in AG ¶ 20 apply here. I specifically considered his uneven employment history and multiple periods of unemployment in the context of the mitigating condition found at AG ¶ 20(b). Obviously, his financial problems are connected to the lack of a long-term job that paid sufficient wages to allow him to address past indebtedness while paying current living expenses. But Applicant does not receive full credit under this mitigating condition because I cannot conclude he has

⁷ Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15.

acted responsibility under the circumstances. I reach that conclusion given the lack of payments on the debts in the SOR and the multiple instances of job loss due to termination.

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.g:	Against 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