



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



In the matter of:)
)
-----) ISCR Case No. 14-00150
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

06/17/2014

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him a security clearance to work in the defense industry. The evidence shows he has a child-support arrearage of about \$17,000 that is largely unresolved as well as unresolved consumer debts. He did not present sufficient evidence to explain and mitigate the financial considerations security concern. Accordingly, this case is decided against Applicant.

Statement of the Case

On February 12, 2014, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant or continue access to classified

information.¹ The SOR is similar to a complaint, and it detailed the reasons for the action under the security guideline known as Guideline F for financial considerations.

The case was assigned to me April 21, 2014, to conduct a hearing requested by Applicant. The hearing was held May 28, 2014. At the hearing, Department Counsel presented Exhibits 1–4, which were admitted. Likewise, Applicant presented Exhibits A–D, which were admitted, and he testified on his own behalf. The transcript (Tr.) was received June 6, 2014.

Findings of Fact

Applicant is a 38-year-old employee of a federal contractor. He is employed as an electronics technician, a job he has held since mid-2013. He is seeking to obtain a security clearance for the first time. He married in 1998 and divorced in 2002. The marriage produced two daughters and they live with their mother.

Applicant has a good record of employment with his current employer as shown by four laudatory letters of recommendation submitted on his behalf. (Exhibit C) His employment history includes three periods of unemployment during the last ten years or so. (Tr. 41–43) He was unemployed during September–December 2003, February 2009–October 2010 (due to serious illness), and March–May 2013.

Applicant admits, as alleged in the SOR, a history of financial problems or difficulties as follows: (1) a child-support arrearage of about \$17,000; (2) seven delinquent medical accounts for about \$17,704; and (3) eight delinquent consumer accounts for about \$8,920. In addition to his admissions, the delinquent accounts are established by credit reports. (Exhibits B, C, and D) The seven delinquent medical accounts are from uninsured medical expenses for Applicant’s hospitalization and medical care due to pancreatitis in 2009.

The child-support arrearage of about \$17,000 is largely unresolved. He attributes the arrearage to his unemployment in 2003, shortly after the divorce, which resulted in him falling behind and he has never caught up. In March 2014, Applicant initiated the process to have his former spouse waive the unassigned child-support arrearage thereby removing it from the jurisdiction of the department of child support services. (Exhibit A) In turn, in April 2014, Applicant executed a promissory note agreeing to pay \$17,000 to his former spouse by making installment payments every pay period with the first payment on April 25, 2014. (Exhibit B)

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant has not paid, settled, entered into repayment agreements, disputed, or otherwise resolved the medical accounts or the consumer accounts. He has retained a law firm for the purpose of working with the credit bureaus to audit and verify the status of his credit reports. (Exhibit D).

For the consumer accounts, Applicant stated that the accounts in SOR ¶¶ 1.b and 1.l are duplicates as are the accounts in SOR ¶¶ 1.e and 1.f. Review of the credit reports establishes the following:

- The \$1,743 collection account in SOR ¶ 1.l is mistaken; the correct amount is \$315; and the account is actually a duplicate of the \$315 collection account in SOR ¶ 1.m. (Exhibit 2 at 12–13) Due to this duplication, SOR ¶ 1.l is resolved for Applicant.
- The collection accounts for \$2,010 and \$2,009 in SOR ¶¶ 1.e and 1.f are owed to the same original creditor, but are in collection with different agencies with different account numbers. (Exhibit 2 at 11) My review of the credit report, with particular attention to the various listed dates, shows that the collection agency holding the \$2,010 account is the successor in interest having purchased the debt from the initial collection agency. Due to this duplication, SOR ¶ 1.f is resolved for Applicant.

At the hearing, Applicant's demeanor's was sincere and his attitude was serious.

Law and Policies

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 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.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁴ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁵

² *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 (10th Cir. 2002) (no right to a security clearance).

³ 484 U.S. at 531.

⁴ Directive, ¶ 3.2.

⁵ Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁰ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹¹

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.¹² Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

Under Guideline F for financial considerations,¹³ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive

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

⁷ Directive, Enclosure 3, ¶ E3.1.14.

⁸ Directive, Enclosure 3, ¶ E3.1.15.

⁹ Directive, Enclosure 3, ¶ E3.1.15.

¹⁰ *Egan*, 484 U.S. at 531.

¹¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹² Executive Order 10865, § 7.

¹³ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

indebtedness or financial problems or difficulties.¹⁴ The overall concern under Guideline F is:

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 information.¹⁵

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information within the defense industry.

There is substantial evidence that Applicant has a history of financial problems or difficulties. His unfavorable financial history indicates inability or unwillingness to satisfy debts¹⁶ and a history of not meeting financial obligations.¹⁷ The facts are more than sufficient to establish these two disqualifying conditions.

With that said, I attach little security significance to the delinquent debts incurred due to the uninsured medical expenses for Applicant's hospitalization and medical care due to pancreatitis in 2009. Those debts were incurred for necessary medical care as opposed to high-living or frivolous expenditures, and they do not indicate poor self-control, questionable judgment, or untrustworthiness. On that basis, the debts in SOR ¶¶ 1.d, 1.g, 1.h, 1.i, 1.k, 1.n, and 1.o are resolved for Applicant.

Based on the available evidence, none of the six mitigating conditions under Guideline F are sufficient to fully mitigate the security concern stemming from the child-support arrearage and the consumer debts.¹⁸ I gave Applicant some credit for at least addressing his child-support arrearage, but his solution is largely paper-shuffling, resulting in transferring or assigning the arrearage from one creditor to another. Moreover, other than retaining a law firm to audit his credit report, he has done nothing to resolve his admitted consumer debts. To be sure, Applicant's periods of unemployment did not help his situation, but two periods were relatively brief (a few

¹⁴ ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

¹⁵ AG ¶ 18.

¹⁶ AG ¶ 19(a).

¹⁷ AG ¶ 19(c).

¹⁸ AG ¶¶ 20(a)-(f).

months) and the lengthy period of unemployment ended in about October 2010, nearly four years ago. He has not acted with reasonable diligence expected from someone under the circumstances like those at issue. At this point, it is simply too soon to tell if Applicant will adhere to the terms of the promissory note and resolve his consumer debts in the near future.

Of course, a security clearance case is not aimed at collecting debts.¹⁹ Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the security guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.²⁰

Here, the evidence does not support a conclusion that Applicant has established a plan and taken steps to implement that plan sufficient to mitigate the security concern.

Applicant's history of financial problems raises doubt about his judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent standard, I resolve that doubt in favor of protecting national security. 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.²¹ In doing so, I considered Applicant's good employment record. Nonetheless, the favorable matters are not enough to justify a conclusion that he met his ultimate burden of persuasion to obtain a favorable clearance decision.

¹⁹ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

²⁰ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

²¹ AG ¶ 2(a)(1)-(9).

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.c:	Against Applicant
Subparagraphs 1.d, 1.g, 1.h, 1.i, 1.k, 1.n, and 1.o	For Applicant
Subparagraphs 1.f and 1.l:	For Applicant
Subparagraphs 1.e, 1.j, 1.m, and 1.p	Against Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge