



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



In the matter of:)	
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)	ISCR Case No. 12-07530
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

01/16/2015

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his security clearance to work in the defense industry. A 61-year-old engineer, he has a history of financial problems or difficulties stemming from ownership of a second residential property that was subject to foreclosure in 2011. Nevertheless, the documentary evidence demonstrates that he has now largely resolved his financial problems. He met his burden to present sufficient evidence to explain and mitigate the financial considerations security concern. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a security clearance application on January 18, 2012.¹ After reviewing the application and information gathered during a background investigation, the Department of Defense (DOD), on June 26, 2014, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly

¹ Exhibit 1.

consistent with the national interest to grant him access to classified information.² The SOR is similar to a complaint. It detailed the reasons for the action under the security guideline known as Guideline F for financial considerations. He answered the SOR on August 29, 2014.

The case was assigned to me November 12, 2014, to conduct the hearing requested by Applicant. The hearing was held as scheduled on December 10, 2014. Department Counsel offered Exhibits 1–6, and they were admitted. Applicant offered Exhibits A, B, C, F, I, and J, and they were admitted. The transcript of the hearing (Tr.) was received December 18, 2014.

The record was kept open until January 9, 2015, to allow Applicant to provide additional documentary evidence. Those matters were timely received and are admitted without objections as Exhibits E, G, H, and K–R.

Findings of Fact

Applicant is a 61-year-old employee who is seeking to retain an existing security clearance. He is employed as a cyber systems engineer for a federal contractor.³ His annual salary is about \$100,000, and he receives retired pay of about \$1,500 monthly as a military retiree.⁴ His financial assets include his current residence that has a market value of about \$350,000 (subject to a mortgage) and investment accounts of about \$180,000.⁵

Applicant's employment history includes two decades of honorable service in the U.S. Air Force.⁶ He served as an intelligence analyst, and he retired as a technical sergeant (pay grade E-6) in 1997.⁷ He began working for his current employer within a month of his military retirement. He has held a security clearance for many years as an airman and a contractor.⁸

² 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.

³ Tr. at 8.

⁴ Exhibit 2 (personal financial statement and pay stubs provided in response to interrogatories).

⁵ Exhibit 2 (personal financial statement); Tr. 84–86.

⁶ Exhibits I, J, K, and L.

⁷ Exhibit 1; Tr. 43.

⁸ Tr. 37.

Applicant's first marriage ended in divorce in 1982; he remarried in 1989; and he and his wife have lived separately since 2000.⁹ They do not intend to divorce.¹⁰ Applicant and his wife do not have a written separation agreement or a court-ordered separation, but he provides financial support to her on an irregular and informal basis.¹¹ He has three adult children. Two daughters from his second marriage are serving in the military.¹² His son from his first marriage was a military officer who served in Afghanistan; his son received a 100% disability rating from the Department of Veterans Affairs due to PTSD; his son also receives Social Security disability insurance; and his son is not employable.¹³

The SOR alleges and there is substantial evidence to show that Applicant has a history of financial problems or difficulties.¹⁴ He traces his financial problems to the ownership of a second residential property that was subject to foreclosure. For ease of understanding, the property will be referred to as the Harwood house.

Applicant bought the Harwood house in 1996 before he retired from the Air Force, and he lived there until 2006 when he bought his current home.¹⁵ After he moved, the Harwood house was either a rental property or unoccupied.¹⁶ He decided to sell the Harwood house because he no longer wanted the financial burden of a second home,¹⁷ but he was unable to sell it due to the general economic downturn at the time. He also attempted a short-sale without success.¹⁸ The Harwood house resulted in what Applicant described as "the domino effect," whereby he fell behind on other payments while making payments on the mortgage loans for the Harwood house and his primary residence. He ended up borrowing money from his 401(k) account to pay off various debts. The foreclosure was completed in 2011.¹⁹

⁹ Exhibit 1.

¹⁰ Tr. 44.

¹¹ Tr. 83–84.

¹² Tr. 44.

¹³ Tr. 44–46.

¹⁴ Exhibits 1–6.

¹⁵ Exhibit 1; Tr. 47.

¹⁶ Tr. 47–48.

¹⁷ Tr. 61.

¹⁸ Tr. 54–55.

¹⁹ Exhibit E.

The SOR includes a first and second mortgage loan for the Harwood house and six other delinquent debts. The debts are discussed below in the order alleged in the SOR.

(1) The first debt is a \$4,103 judgment filed obtained by a major bank and credit-card issuer against Applicant in about November 2008. All four credit reports, from January 2012, December 2013, May 2014, and November 2014, show the judgment is not paid or satisfied.²⁰ During the background investigation, he explained that it was paid via garnishment of his wages and was paid in full in about August 2010.²¹ In response to interrogatories, he stated that the debt was paid, but he did not provide documentary proof of payment.²² At the hearing, he provided Exhibit A, which is correspondence from a law firm indicating that he was issued a refund check for \$431 on July 27, 2010, due to overpayment by him in a collection lawsuit involving the same creditor.²³ The lawsuit's case number in the correspondence is slightly different from the case number in the credit reports (namely; last four digits are 8653 versus 8652, respectively). But there is no mention in the four credit reports of a second judgment obtained by this creditor.

The evidence is in conflict. Based on Applicant's explanations, Exhibit A, and the absence of a second judgment for the same creditor in the credit reports, I find that the judgment was paid in about July 2010, which is consistent with his explanation during the background investigation as well as the date of the refund check.

(2) The second debt is a \$5,610 charged-off account. It is listed in the December 2013 and May 2014 credit reports, but not the initial and most recent credit reports. The two relevant credit reports show the account was opened in August 2006 and was charged off and transferred or sold to another lender.²⁴ At the hearing, he produced Exhibit B, which is an account statement from the same creditor showing the account had a zero balance as of August 2008 due to a payment of \$4,936 that same month.²⁵ The account number in Exhibit B does not match the account number in the two relevant credit reports. He explained that \$5,610 charged-off account is the same account reflected in Exhibit B. He disclosed having a delinquent account with this creditor, with the same account number in Exhibit B, in his January 2012 security clearance application.²⁶ Likewise, he discussed this account during the background

²⁰ Exhibits 3–6 (all references to credit reports in this decision concern these exhibits).

²¹ Exhibit 2.

²² Exhibit 2.

²³ Exhibit A; Tr. 63–69.

²⁴ Exhibits 4 and 5.

²⁵ Exhibit B; Tr. at 69–70.

²⁶ Exhibit 1.

investigation, explaining it was turned over to a collection agency, name not recalled, that sued him for the debt, but the lawsuit was dismissed based on proof of payment.²⁷ He was not asked about the debt in the interrogatories.²⁸

The evidence is in conflict. Based on evidence as a whole, including the absence of the debt in the initial and most recent credit reports, I find the debt was paid or otherwise resolved as he stated during the background investigation.

(3) The third debt is a delinquent credit card account for \$5,552, which the original creditor placed for collection with a third party. It is reported in the first three credit reports, but it is not reported in the most recent credit report from November 2014. The first three credit reports show that the account was opened in March 2008. At the hearing, Applicant produced Exhibit C, which is a July 2007 account statement from the original creditor showing a zero balance and a closed account.²⁹ The account number in Exhibit C does not match the account number in the first three credit reports. During the background investigation, he explained that the account was paid in full.³⁰ He was not asked about the debt in the interrogatories.³¹

The evidence is in conflict. Based on conflicting dates showing the account was opened in March 2008 versus the July 2007 account statement and the different account numbers, I find that Exhibit C does not pertain to \$5,552 collection account. But given the absence of the debt from the most recent credit report from November 2014, I find that the debt was paid as he stated during the background investigation.

(4) & (5) The four and fifth debts are the first and second mortgage loans for the Harwood house. The first loan was in foreclosure while the second loan was 120 days or more past due. Applicant explained and provided documentary evidence showing that both the first and second mortgage loans were paid or otherwise resolved and have zero balances.³² The account statement for the first loan shows Applicant was still making payments in early 2011 and the loan was paid in full with a payment of \$76,996 in June 2011, which I find is when the foreclosure was completed.³³

(6) The sixth debt is a \$602 charged-off account stemming from a consumer account. It is reported in the initial credit report from January 2012, but it is not reported

²⁷ Exhibit 2.

²⁸ Exhibit 2.

²⁹ Exhibit C; Tr. 70–73.

³⁰ Exhibit 2.

³¹ Exhibit 2.

³² Exhibits E, I, and J; Tr. 73–76.

³³ Exhibit E.

in the other three credit reports. Applicant explained and provided documentary evidence showing the account was paid, had a zero balance, and was closed as of September 2007.³⁴

(7) The seventh debt is \$6,957 collection account, which the original creditor placed for collection with a third party. It is reported in the initial credit report from January 2012, but it is not reported in the other three credit reports. Applicant explained and provided documentary evidence (a court record) that the collection agency sued him on this debt and the lawsuit was dismissed in early 2009.³⁵

(8) The eight debt is a \$11,444 collection account. It is reported in the initial credit report from January 2012, but it is not reported in the other three credit reports. Applicant denies responsibility for and knowledge of this account.³⁶ In his post-hearing submission, Applicant provided a letter showing he is disputing the debt and has requested that the creditor provide written validation of the debt as provided for under federal law.³⁷

Department Counsel asked Applicant about two additional debts not alleged in the SOR.³⁸ The documentary evidence shows that the debts were paid or resolved. The \$1,941 judgment, which was filed in May 2009, was paid a few months later in July 2009 as reported in the January 2012 credit report.³⁹ In response to the interrogatories, Applicant provided a letter from the utility showing an account for the Harwood house was in good standing, thereby resolving the \$657 collection account.⁴⁰

Applicant also provided documentary proof of payment of other accounts not alleged in the SOR as follows: (1) payment of \$3,812 in 2008 for a credit card account (ending in #6376) with a zero account balance; (2) payment of \$4,362 in 2008 for a joint credit card account with his wife (ending in #7525) with a zero account balance; (3) payment of \$793 in 2008 for a credit card account (ending in #0965) with a zero account balance; (4) payment of \$9,058 in 2008 for a credit card account (ending in #7446) with a zero account balance; (5) payment of \$1,589 in 2008 for a credit card account (ending in #9329) with a zero account balance; and (6) payment of \$2,010 in 2007 for a credit card account (ending in #701) with a zero account balance. In addition to those accounts, in his post-hearing submission he presented documentary proof (court

³⁴ Exhibit F; Tr. 76–77.

³⁵ Exhibit G; Tr. 77–80.

³⁶ Answer to SOR; Exhibit 2 (background investigation and interrogatories); and Tr. 80–81.

³⁷ Exhibit H.

³⁸ Tr. 90–93.

³⁹ Exhibit 3.

⁴⁰ Exhibit 2 (utility letter).

records) of eight collection lawsuits brought against him during 2010–2013, all of which were dismissed by the state court.⁴¹ As I read the court records, none of the eight lawsuits were brought by creditors related to the debts in the SOR.

Applicant described his current financial situation as “very good” based on the absence of credit card bills or car loan payments and his mortgage loan that is in good standing.⁴² His description is consistent with the most recent credit report from November 2014.⁴³ Other than the two judgments, the mortgage loans, and the utility collection account discussed above, the credit report shows no delinquent accounts.

At the hearing, Applicant was serious and respectful and he answered questions candidly, although his recollection was faulty at times. I had no concerns about his credibility or truthfulness.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁴⁴ 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.”⁴⁵ 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.⁴⁶ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁴⁷

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁴⁸ The Government has the burden of presenting

⁴¹ Exhibits K–R.

⁴² Tr. 83.

⁴³ Exhibit 6.

⁴⁴ *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).

⁴⁵ 484 U.S. at 531.

⁴⁶ Directive, ¶ 3.2.

⁴⁷ Directive, ¶ 3.2.

⁴⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

evidence to establish facts alleged in the SOR that have been controverted.⁴⁹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁵⁰ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁵¹

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁵² The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.⁵³

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.⁵⁴ 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,⁵⁵ 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.⁵⁶ The overall concern is:

⁴⁹ Directive, Enclosure 3, ¶ E3.1.14.

⁵⁰ Directive, Enclosure 3, ¶ E3.1.15.

⁵¹ Directive, Enclosure 3, ¶ E3.1.15.

⁵² *Egan*, 484 U.S. at 531.

⁵³ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁵⁴ Executive Order 10865, § 7.

⁵⁵ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

⁵⁶ 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).

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.⁵⁷

The concern is broader than the possibility that a person might knowingly compromise classified 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 information.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. Taken together, the evidence indicates inability or unwillingness to satisfy debts⁵⁸ and a history of not meeting financial obligations⁵⁹ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions, and the facts also suggest a degree of inattention or irresponsibility.

In mitigation, I have considered six mitigating conditions under Guideline F,⁶⁰ and I have especially considered the following as most pertinent:

AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved and is under control;

AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) the [person] has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The mitigating conditions in AG ¶¶ 20(c) and 20(d) apply because there are clear indications that Applicant's financial problems are resolved or under control, and he has made a good-faith effort to repay his debts. Importantly, he is not incurring new delinquent debt; he has sizable financial assets; and he has a good income from his employment and retired pay, which provides a regular and substantial monthly cash flow. In other words, he is not financially overextended or under financial stress or

⁵⁷ AG ¶ 18.

⁵⁸ AG ¶ 19(a).

⁵⁹ AG ¶ 19(c).

⁶⁰ AG ¶ 20(a)–(f).

strain. As demonstrated in the findings of fact, he took steps to repay numerous creditors over the years and the Harwood house is no longer a financial burden. Taken together, these circumstances show a favorable upward trend along with financial responsibility.

In addition, the mitigating condition in AG ¶ 20(e) applies to the \$11,444 collection account alleged in SOR ¶ 1.h. Applicant denies responsibility for and knowledge of this account, and he provided documented proof of action taken to resolve the issue by demanding the creditor provide written validation of the debt.

Applicant's financial record is not perfect. But the evidence also supports a conclusion that he has established a meaningful track record of reform and rehabilitation through actual debt reduction. Applicant is a mature man with two decades of honorable military service along with years of employment for a defense contractor while holding a security clearance. In sum, I am persuaded that Applicant's financial problems are behind him and that the same or similar problems will not occur again.

Applicant's history of financial problems does not justify current doubt about his reliability, trustworthiness, good judgment, and ability to protect classified 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 gave due consideration to the whole-person concept.⁶¹ Accordingly, 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 as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.h:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge

⁶¹ AG ¶ 2(a)(1)–(9).