



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



In the matter of:)	
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)	ISCR Case No. 12-07700
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., and
Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

06/28/2016

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. He did not meet his burden to present sufficient evidence to explain and mitigate the financial considerations security concern. With that said, he did not deliberately omit relevant information about his financial problems when he completed security clearance applications in 2012 and 2015. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on March 28, 2012, and again on February 25, 2015.¹ On August 22, 2015, after reviewing the applications and information gathered during a

¹ Exhibits 1 and 2 (commonly known as a security clearance application).

background investigation, the Department of Defense (DOD)² 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.³ 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 and Guideline E for personal conduct. He answered the SOR on September 5, 2015, and requested a hearing.

The case was assigned to me on December 1, 2015. The hearing was held as scheduled on January 20, 2016. The transcript of the hearing (Tr.) was received on January 29, 2016.

The record was kept open to allow Applicant to submit additional documentation. He made two separate post-hearing submissions, and those matters are admitted as Exhibits D–N.

Findings of Fact

Applicant is a 51-year-old shipping and receiving clerk who works in a warehouse. He has a high school diploma. He has never married, but he has a longtime fiancée, and they have lived together for many years sharing expenses. He has lived at the same residential address since 1999. He has worked for his current employer since February 2015. Before that, he worked the same job for a different company from 1999 to 2015.

Applicant reported continuous employment since 1999 in his security clearance applications;⁴ however, at the hearing he discussed two periods of unemployment due to health problems. His health problems stem from a kidney transplant he had in 1994.⁵ The first period of unemployment for about two years occurred during 2002–2005.⁶ The

² The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

³ 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).

⁴ Exhibits 1 and 2.

⁵ Tr. 50.

⁶ Tr. 60–63.

second period was during 2011–2013.⁷ During those periods, he received about 60% of his income through a combination of short-term and long-term disability payments.

Under Guideline F, the SOR alleges that Applicant has about \$26,000 in delinquent financial accounts. The 16 delinquent debts fall into the following groups: (1) six charged-off or collection accounts for \$15,350; (2) nine medical collection accounts for \$1,300; and (3) an unpaid judgment for \$9,586 obtained by his homeowner's association. He admitted owing all the delinquent debts in his answer to the SOR. In addition to his admissions, the delinquent debts are established by the documentary evidence.⁸

Under Guideline E, the SOR alleges that Applicant gave deliberately false answers when he failed to disclose delinquencies involving routine accounts in the past seven years when he completed his 2012 and 2015 security clearance applications. In his answer to the SOR, he admitted he answered the relevant questions in the negative, but he explained at hearing his omissions were not deliberately false.⁹

The available documentary evidence shows Applicant made some effort to address his delinquent debts.¹⁰ Most notably, he entered into a debt-management program with a credit counseling service in March–April 2015,¹¹ but he was unable to maintain the \$322 monthly payment for long. He presented a 3-in-1 credit report, dated January 2016, which shows a large number (17, 13, and 21) of derogatory accounts. At the hearing, Applicant explained that he had concluded that he had no alternative but to seek relief in bankruptcy court.¹² He retained the services of a bankruptcy attorney to file a Chapter 7 bankruptcy case for him, a petition was filed, and the meeting of creditors was held in May 2016.¹³ No other information about the bankruptcy case is reflected in the documentary evidence.

⁷ Tr. 57.

⁸ Exhibits 3–10.

⁹ Tr. 51–52.

¹⁰ Exhibits 4, 5, G, H, I, and J.

¹¹ Exhibits 4 and 5.

¹² Tr. 98.

¹³ Exhibits A, B, M, and N.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁴ 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.”¹⁵ 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.¹⁶ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁷

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁸ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁰ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²¹

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²² The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²³

¹⁴ *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).

¹⁵ 484 U.S. at 531.

¹⁶ Directive, ¶ 3.2.

¹⁷ Directive, ¶ 3.2.

¹⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁹ Directive, Enclosure 3, ¶ E3.1.14.

²⁰ Directive, Enclosure 3, ¶ E3.1.15.

²¹ Directive, Enclosure 3, ¶ E3.1.15.

²² *Egan*, 484 U.S. at 531.

²³ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.²⁴ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

Personal conduct under Guideline E²⁵ is a concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly handle and safeguard sensitive information. The suitability of an applicant may be questioned or put into doubt when an applicant engages in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with the rules and regulations. Of special interest is any failure by an applicant to provide truthful and candid answers during the process or a failure to cooperate with the process.

Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement in official governmental matters is a concern. Deliberate means knowingly and willfully. In other words, the omission, concealment, or falsification must be done consciously and intentionally. An omission of relevant and material information, for example, is not deliberate if the person genuinely forgot about the matter, inadvertently overlooked it, misunderstood the question, thought the information did not need to be reported, or otherwise made an honest mistake.

Applicant denied the two falsification allegations in SOR ¶¶ 2.a and 2.b, which alleged that he deliberately failed to report numerous delinquent accounts in his 2012 and 2015 security clearance applications. I am not persuaded that his omissions were deliberately false. My impression of Applicant is that he is not one for details, and that he failed to disclose the delinquent accounts because he inadvertently overlooked them. Accordingly, the falsification allegations are decided for Applicant.

²⁴ Executive Order 10865, § 7.

²⁵ AG ¶¶ 15, 16, and 17 (setting forth the concern and the disqualifying and mitigating conditions).

Under Guideline F for financial considerations,²⁶ 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.²⁷ The overall concern 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.²⁸

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 as well as an inability to satisfy debts.²⁹ That conclusion is supported by Applicant's admissions to the SOR allegations and the documentary evidence. With that said, I have given little weight to the nine medical collection accounts for a total of \$1,300. That is not a large sum of money. It is also presumed that the medical expenses were incurred for necessary medical care as opposed to frivolous or irresponsible spending, consistent spending beyond one's means, or financial problems that are linked to issues of security concern.

In mitigation, I have considered the six mitigating conditions under Guideline F,³⁰ and the following are most pertinent:

AG ¶ 20(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the [person] acted responsibly under the circumstances; and

²⁶ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²⁷ 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).

²⁸ AG ¶ 18.

²⁹ AG ¶¶ 19(a) and (c).

³⁰ AG ¶ 20(a)–(f).

AG ¶ 20(c) [t]here are clear indications that the problem is being resolved or is under control.

Applicant receives credit under both of the mitigating conditions mentioned above. Nonetheless, the credit is insufficient to explain and mitigate his history of financial problems, which is ongoing as reflected by the Chapter 7 bankruptcy case. I recognize that Applicant underwent a kidney transplant, which is a major medical procedure, years ago and is still dealing with health issues. But it is also noted that the nine medical collection accounts for \$1,300 is a small portion, about 5 percent, of the delinquent debt at issue. Moreover, the pending bankruptcy case serves as a clear warning or caution sign that Applicant's overall financial situation is unstable. It's true that once he obtains a discharge he will be released from further liability on the dischargeable debts. But even so, it is too soon to tell if Applicant will be financially responsible after the bankruptcy case is completed.

Applicant's history of financial problems or difficulties creates doubt about his current 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.³¹ Accordingly, I conclude that he did not meet 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:	Against Applicant
Subparagraphs 1.a–1.d:	Against Applicant
Subparagraphs 1.e–1.m:	For Applicant
Subparagraphs 1.n–1.p:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a–2.b:	For Applicant

³¹ AG ¶ 2(a)(1)–(9).

Conclusion

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

Michael H. Leonard
Administrative Judge