



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



In the matter of:)	
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)	ISCR Case No. 12-09949
Applicant for Security Clearance)	

Appearances

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

03/20/2013

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for a security clearance to work in the defense industry. The evidence shows he has a history of financial problems, which includes failure to file federal income tax returns and back taxes owed to the IRS. He is now in compliance with the IRS and has an installment agreement to resolve his account balance with the IRS. His financial problems are due, in part, to circumstances largely beyond his control, such as: (1) the serious illness of his spouse; (2) a lengthy marital separation; (3) his spouse’s period of unemployment and underemployment; and (4) his diagnosis for posttraumatic stress disorder (PTSD) as a result of his exposure to combat while serving with the U.S. Army. Given all the circumstances, Applicant produced sufficient evidence to mitigate the security concerns under the financial considerations guideline. Accordingly, this case is decided for Applicant.

Statement of the Case

On November 5, 2012, 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 Applicant 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.

Applicant timely answered the SOR and requested a hearing. The hearing took place February 21, 2013. The transcript (Tr.) was received March 4, 2013.

The record was kept open until March 15, 2013, to allow Applicant to submit additional documentary exhibits. Applicant made a timely submission, and those matters are admitted, without objections, as Exhibits B, C, D, and E.²

Findings of Fact

As alleged in the SOR, Applicant admits the following: (1) owing back taxes to the IRS for 2008 and 2009; (2) failing to file federal income tax returns for 2008 and 2009; and (3) owing three collection accounts and three unpaid judgments for a total of about \$11,863. He denied owing a \$4,819 collection account, but admitted it at the hearing.³ His admissions are accepted and adopted and incorporated as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 45-year-old employee for a company engaged in defense contracting. He works as an instructor at a military installation; his area of expertise is field artillery; and he has had the same instructor job with a series of companies since 2006. He is seeking to retain a security clearance previously granted to him.

Applicant's employment history includes 20 years of honorable service in the U.S. Army, from which he retired in 2006 as a sergeant first class. He held a security clearance without incident while in the Army. His military service includes deployments to Operations Desert Shield and Storm during 1990–1991, Bosnia during 2001, and Operation Iraqi Freedom during 2003.⁴ His decorations include the Meritorious Service

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.

² At the hearing, Government Exhibits 1–5 and Applicant Exhibit A were admitted.

³ Tr. 35.

⁴ Exhibit 3 (DD Form 214).

Medal, Army Commendation Medal (4th award), Army Achievement Medal (5th award), Army Good Conduct Medal (7th award), National Defense Service Medal (2nd award), Southwest Asia Service Medal with Bronze Star, Global War on Terrorism Expeditionary Medal, Korea Defense Service Ribbon, and Kuwait Liberation Medal (Saudi Arabia).

Applicant was diagnosed with PTSD as a result of his service in Iraq.⁵ He served in Iraq for about six months during January–July 2003, which was a time of intense combat operations.⁶ He participates in ongoing individual and group therapy. His symptoms include anxiety, sleep disturbance, and re-experiencing traumatic events, and he has exhibited behaviors of avoidance, isolation, and irritability. His prognosis is good. Applicant mentioned his PTSD diagnosis near the end of his testimony, he became emotional when discussing the subject, and the hearing was recessed until he was able to compose himself and continue.⁷

Applicant is married and has one child, a 18-year-old college student. His salary is about \$49,000 annually; his military retiree pay is about \$22,000 annually; and his wife is now earning about \$1,500 monthly. He has a 16-year-old child from outside his marriage, and he learned of the child in about 2009 when he was sued for paternity, which was established in 2010. He was ordered to pay \$725 monthly in ongoing child support and ordered to pay \$42,000 in arrears. Part of the \$725 monthly payment is for the arrears. He is current with his child support payments, which are automatically deducted from his military retiree pay.

Applicant has a history of financial problems, including federal tax problems, which he does not dispute. His financial problems are confirmed by the documentary exhibits.⁸ His financial situation was stable until he neared retirement from the Army. His spouse was diagnosed with cancer in 2004, and he incurred additional expenses on credit cards traveling back and forth from his duty station to her location. His spouse's health is now good, and his health insurance covered her necessary medical treatment and expenses. Besides the additional financial obligation, the paternity lawsuit resulted in marital separation that ended in 2011. The separation caused additional expenses for separate households. In addition, his spouse lost her full-time job about two years ago and then worked part-time until she recently obtained full-time employment.

⁵ Exhibit B.

⁶ The Iraq War is usually dated to begin with the invasion of Iraq starting ten years ago on March 20, 2003, by an invasion force led by the United States, although clashes between the Iraq military and U.S. and U.K. air forces had been ongoing for several years.

⁷ Tr. 58–67.

⁸ Exhibits 1–5.

Applicant is now in compliance with the IRS, the necessary returns were filed, and he has an installment agreement to resolve his account balance with the IRS.⁹ He owes back taxes for tax years 2008, 2009, 2010, and 2011. His estimated account balance was \$7,921 as of September 2012.¹⁰ At the hearing he stated the account balance is about \$12,000.¹¹ His installment agreement was established in about 2012 at the rate of \$163 monthly, and in 2013 it was increased to \$300 monthly.

The collection accounts and unpaid judgments in the SOR ¶¶ 1.a–1.g are largely unresolved.¹² He has reduced the balance of the \$1,210 unpaid judgment in SOR ¶ 1.d to \$395, and it should be paid off soon.¹³ He also made at least two payments of \$257 each on the collection account in SOR ¶ 1.f.¹⁴ In addition, he satisfied a judgment (not alleged in the SOR) in December 2012.¹⁵ He considered seeking relief via bankruptcy, but decided that he would rather repay his debts. His plan is to negotiate repayment agreements with the various creditors.¹⁶

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁷ 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.”¹⁸ 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.

⁹ Exhibits C and D.

¹⁰ Exhibit 3 (IRS account transcripts).

¹¹ Tr. 27.

¹² Tr. 54.

¹³ Exhibit E.

¹⁴ Exhibit 3 (May and June 2012 letters).

¹⁵ Exhibit A.

¹⁶ Tr. 54.

¹⁷ *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).

¹⁸ 484 U.S. at 531.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁴ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁵ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁶

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.²⁷ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

¹⁹ Directive, ¶ 3.2.

²⁰ Directive, ¶ 3.2.

²¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²² Directive, Enclosure 3, ¶ E3.1.14.

²³ Directive, Enclosure 3, ¶ E3.1.15.

²⁴ Directive, Enclosure 3, ¶ E3.1.15.

²⁵ *Egan*, 484 U.S. at 531.

²⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁷ Executive Order 10865, § 7.

Discussion

Under Guideline F for financial considerations,²⁸ 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.²⁹ 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.³⁰

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

The evidence supports a conclusion that Applicant has a history of financial problems. This shows inability or unwillingness to satisfy debts³¹ and a history of not meeting financial obligations.³² The facts are more than sufficient to establish these disqualifying conditions. In addition, his failure to file federal tax returns is a concern.³³

There are six mitigating conditions to consider under Guideline F.³⁴ Based on the evidence before me, the most pertinent are AG ¶¶ 20(b), (c), and (d). First, AG ¶ 20(b) applies because Applicant's financial problems are due, in part, to circumstances largely beyond his control, such as: (1) the serious illness of his spouse; (2) a lengthy marital separation; (3) his spouse's period of unemployment and underemployment; and (4) his

²⁸ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁹ 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).

³⁰ AG ¶ 18.

³¹ AG ¶ 19(a).

³² AG ¶ 19(c).

³³ AG ¶ 19(g).

³⁴ AG ¶¶ 20(a)–(f).

diagnosis for PTSD as a result of his exposure to combat.³⁵ Moreover, he acted responsibly under the circumstances by continuing to provide for his spouse and daughter as well as taking on an unexpected child support obligation. Second, AG ¶ 20(c) applies because there are clear indications that his tax problems are in the process of being resolved and are under control. And third, AG ¶ 20(d) applies because, by coming into compliance with the IRS and entering into an installment agreement, Applicant demonstrated a good-faith effort to resolve his tax problems.³⁶

Of course, a security clearance case is not aimed at collecting debts or enforcing tax laws.³⁷ Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the 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.³⁸

Here, the evidence shows that Applicant established an installment agreement for the back taxes and is otherwise in compliance with the IRS. He has made limited progress in paying off the collection accounts and unpaid judgments. Given his track

³⁵ This mitigating condition is not fully applicable because filing tax returns was within Applicant's control, and it was irresponsible not to do so.

³⁶ ISCR Case No. 99-0201 (App. Bd. Oct. 12, 1999) ("[T]he concept of 'good faith' requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Such standards are consistent with the level of conduct that must be expected of persons granted a security clearance.") (citations omitted); ISCR Case No. 02-30304 (App. Bd. Apr. 20, 2004) (relying on a legally available option, such as Chapter 7 bankruptcy, is not a good-faith effort) (citations omitted); ISCR Case No. 99-9020 (App. Bd. Jun. 4, 2001) (relying on the running of a statute of limitations to avoid paying a debt is not a good-faith effort).

³⁷ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

³⁸ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

record, this is not the type of financial case in which I would ordinarily grant a favorable decision, but this case requires further consideration under the whole-person concept.³⁹

First and foremost is the undisputed fact that Applicant is now suffering from PTSD based on his service in Iraq. Considering his symptoms and related behaviors, it is likely that the PTSD had a ripple effect throughout various areas of his life, including finances. His PTSD is an important circumstance to consider, and a certain amount of leeway and understanding is entirely appropriate in cases involving our veterans with PTSD. Applicant has also made efforts to resolve his financial problems, and he has a plan going forward to address his indebtedness, an amount that is not impossibly large. Finally, I gave weight to his 20 years of honorable military service and the fact that he is cognizant of his security responsibilities, which bodes well for his ability to protect classified information. Weighing the evidence, I am persuaded that Applicant produced sufficient evidence to mitigate the security concerns.

Based on the record before me, I have no doubts or concerns about Applicant's judgment, reliability, trustworthiness, 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*. Accordingly, I conclude that Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision.

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

³⁹ AG ¶ 2(a)(1)–(9).