



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



In the matter of:)
)
-----) ISCR Case No. 13-00154
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

09/13/2013

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. There is substantial evidence establishing a history of financial problems or difficulties, but he presented sufficient evidence to mitigate the financial considerations security concern. In addition, he did not deliberately omit, conceal, or falsify relevant facts when he answered a question about his financial record on a November 2012 security clearance application. Accordingly, this case is decided for Applicant.

Statement of the Case

On or about April 12, 2013, 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 guidelines known as Guideline F for financial considerations and Guideline E for personal conduct.

Applicant answered the SOR on May 15, 2013. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

Thereafter, Department Counsel submitted all relevant and material information that could be adduced at a hearing.³ This so-called file of relevant material (FORM) was mailed to Applicant, who received it July 23, 2013. He replied within the 30-day period allowed under the Directive, and his reply marked and admitted without objections as follows: (1) Exhibit A—one page memorandum, dated August 24, 2013; (2) Exhibit B—letter of recommendation, dated August 22, 2013; (3) Exhibit C—letter of recommendation, dated April 6, 2013, with military certificate of appreciation; (4) Exhibit D—Transunion credit report, dated October 28, 2012; and (5) Exhibit E—Experian credit report, dated October 28, 2012. The case was assigned to me September 10, 2013.

Findings of Fact

Applicant's Answer to the SOR is mixed. He admitted the three delinquent debts alleged in SOR ¶¶ 1.a–1.c; he denied the six delinquent debts alleged in SOR ¶¶ 1.d–1.i and stated that those debts were resolved; and he denied the allegation in SOR ¶ 2.a that he falsified his response to Question 26 concerning his financial record. 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 44-year-old employee of a federal contractor. He is seeking to obtain a security clearance for his job as a foreign-language linguist and cultural advisor working in support of the U.S. armed forces. His educational background includes an associate's degree awarded in 2009 and a bachelor's degree awarded in 2011. His first marriage ended in divorce, and he married his current spouse in 2001. He is the father of three children, born in 1999, 2003, and 2010. His spouse is a school teacher.

Applicant's employment history includes working in sales and management for a jewelry store from 1999 to early 2012, when he was laid off. He was then unemployed

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 Directive, Enclosure 3, ¶ E3.1.7.

³ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which may be identified as evidentiary exhibits in this decision.

from February 2012 until the end of November 2012, a period of about ten months. During this time, his family relied on his spouse's salary and unemployment compensation, which amounted to about \$1,944 monthly.⁴ This allowed Applicant to provide for his family's basic needs, but he fell behind on credit card accounts and medical bills. His job as a linguist, which he began in about December 2012, has allowed him to repay his delinquent debts. Since then, he has worked overseas in support of a Special Operations Task Force in Afghanistan. He has performed his duties, which include going on combat operations, well as evidenced by two letters of recommendation from U.S. special forces officers.⁵

While going through the in-processing requirements with his company, Applicant was tasked to complete a security clearance application. He signed the application on November 12, 2012.⁶ In completing the application, he disclosed four delinquent accounts in response to a question asking about delinquency involving routine accounts. He disclosed a \$63 medical bill that went to collection in 2008, but was paid in 2009; he disclosed a \$1,096 medical collection account (alleged in SOR ¶ 1.a); he disclosed a \$2,522 medical collection account (alleged in SOR ¶ 1.b); and he disclosed a credit card account that was more than 120 days past due in the amount of \$193 (alleged in SOR ¶ 1.c) He did not disclose any other adverse financial accounts, including the delinquent debts alleged in SOR ¶¶ 1.d–1.i.

Applicant has explained that he made an honest mistake by not disclosing the additional delinquent accounts.⁷ He further explained that when he completed the security clearance application, he relied on credit reports that he obtained on October 28, 2012,⁸ which he provided in reply to the FORM. The first credit report contains nine adverse accounts of which only three were listed as 120 days past due.⁹ The second report contains eight adverse accounts of which one is listed as 120 days past due.¹⁰ And those are three of the delinquent accounts he disclosed in his security clearance application.

The SOR alleged nine accounts in amounts ranging from \$213 to \$2,522 for a total of about \$8,710 in some form of delinquency. In his Answer to the SOR, Applicant addressed each account and provided documentary information showing that he had

⁴ Answer to SOR.

⁵ Exhibits B and C.

⁶ Exhibit 4.

⁷ Answer to SOR; Response to FORM.

⁸ Exhibits D and E.

⁹ Exhibit D.

¹⁰ Exhibit E.

resolved all nine accounts.¹¹ The status of those accounts is summarized in the following table.

| Debt | Status |
|---|------------------------|
| SOR ¶ 1.a—\$1,069 medical collection account. | Paid off in May 2013. |
| SOR ¶ 1.b—\$2,522 medical collection account. | Paid off in May 2013. |
| SOR ¶ 1.c—\$213 charged-off account. | Paid off in May 2013. |
| SOR ¶ 1.d—\$886 charged-off account. | Paid off in Feb. 2013. |
| SOR ¶ 1.e—\$830 charged-off account. | Paid off in Feb. 2013. |
| SOR ¶ 1.f—\$647 charged-off account. | Settled in Feb. 2013. |
| SOR ¶ 1.g—\$1,233 past-due account. | Paid off in Feb. 2013. |
| SOR ¶ 1.h—\$433 past-due account. | Paid off in Feb. 2013. |
| SOR ¶ 1.i—\$850 past-due account. | Paid off in Feb. 2013. |

Law and Policies

It is well-established law that no one has a right to a security clearance.¹² 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.”¹³ 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.¹⁴ An

¹¹ To his credit, Department Counsel carefully reviewed the evidence and acknowledged that the accounts have been resolved. Brief at 4–5.

¹² *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).

¹³ 484 U.S. at 531.

¹⁴ Directive, ¶ 3.2.

unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁰ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²¹

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.²² Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

¹⁵ Directive, ¶ 3.2.

¹⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁷ Directive, Enclosure 3, ¶ E3.1.14.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ *Egan*, 484 U.S. at 531.

²¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²² Executive Order 10865, § 7.

Discussion

Under Guideline F for financial considerations,²³ 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.²⁴ 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.²⁵

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

Applicant's unfavorable financial history indicates inability or unwillingness to satisfy debts²⁶ and a history of not meeting financial obligations.²⁷ The facts are more than sufficient to establish these disqualifying conditions.

There are six mitigating conditions under Guideline F.²⁸ Given the evidence here, I have considered the following:

AG ¶ 20(b) the conditions that resulted in the financial problem 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 individual acted responsibly under the circumstances; and

AG ¶ 20(d) the individual initiated a good-faith effort to replay overdue creditors or otherwise resolve debts.

²³ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁴ 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).

²⁵ AG ¶ 18.

²⁶ AG ¶ 19(a).

²⁷ AG ¶ 19(c).

²⁸ AG ¶¶ 20(a)–(f).

Applicant's financial problems are related to his unemployment, a ten-month period that immediately preceded completion of the security clearance application. Indeed, losing a job is one of the most common reasons for falling behind on bills and defaulting on financial obligations. Once he began working for his current employer in about December 2012, he took prompt and reasonable steps to address his financial problems. He resolved six of the nine delinquent debts in February 2013 (a few months before the SOR was issued), and he resolved the remaining debts a few months later in May 2013. Given these circumstances, Applicant earns substantial credit under the two mitigating circumstances mentioned above.

Of course, a security clearance case is not aimed at collecting debts or enforcing tax laws.²⁹ 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.³⁰

Based on the available evidence, I am persuaded that Applicant has taken enough significant actions to mitigate the security concern under Guideline F.

Under Guideline E for personal conduct, the concern is that "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information."³¹ In addition to those general matters, "[o]f special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance

²⁹ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

³⁰ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

³¹ AG ¶ 15.

process.”³² A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if, for example, the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

Here, the SOR alleges that Applicant falsified his November 2012 security clearance application by failing to disclose several delinquent debts. I have considered the arguments of Department Counsel, and I am not persuaded that Applicant deliberately omitted, concealed, or falsified material facts when answering the relevant question. I reach this conclusion based on the following: (1) he answered Question 26 in the affirmative and disclosed four delinquent debts, one of which had already been paid; (2) he disclosed three debts (SOR ¶¶ 1.a–1.c) based on two credit reports he obtained in late October 2012; and (3) he provided copies of those credit reports thereby confirming his reliance on those reports. Given these circumstances, it is difficult to believe Applicant was endeavoring to hide or misrepresent his adverse financial record.

After weighing the relevant disqualifying and mitigating conditions and evaluating the evidence in light of the whole-person concept,³³ I conclude Applicant presented sufficient evidence to explain, extenuate, and mitigate the security concerns. In doing so, I gave Applicant credit for his favorable character evidence and his work in support of the U.S. armed forces in Afghanistan. Accordingly, I conclude 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.i: | For Applicant |
| Paragraph 2, Guideline E: | For Applicant |
| Subparagraph 2.a: | For Applicant |

³² *Id.*

³³ AG ¶ 2(a)(1)–(9).

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