



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



In the matter of:)
)
-----) ISCR Case No. 13-01332
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

06/13/2014

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. He did not present sufficient evidence to mitigate the financial considerations security concern stemming from his ongoing financial problems. Accordingly, this case is decided against Applicant.

Statement of the Case

On February 6, 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.

Applicant answered the SOR on March 26, 2014. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

On April 17, 2014, 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 May 10, 2014. Applicant replied to the FORM in a timely manner, and his six-page reply is made part of the record as Exhibit A. The case was assigned to me June 9, 2014.

Ruling on Evidence

Exhibit 5 contains, among other things, a report of investigation (ROI) from the background investigation of Applicant. The 11-page ROI is a summary of an interview of Applicant in February 2013. Under the rules that govern these cases, an ROI may be received and considered as evidence when it is authenticated by a witness.⁴ The ROI is properly authenticated via authenticating interrogatories answered by Applicant. (Exhibit 5 at 12, 25). Accordingly, the ROI is admissible.

Findings of Fact

In his answer to the SOR, Applicant admitted having ten collection or charge-off accounts for a total of about \$12,000. His admissions are accepted, adopted, and incorporated as findings of fact.

Applicant is a 33-year-old employee who is seeking to obtain a security clearance for his job as a security guard. To that end, he submitted a security clearance application in November 2012. (Exhibit 4) He is married and has minor children. His

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.

⁴ Directive, Enclosure 3, ¶ E3.1.20; see ISCR Case No. 11-13999 (App. Bd. Feb. 3, 2014) (the Appeal Board restated existing caselaw that a properly authenticated report of investigation is admissible).

employment history includes honorable service while on active duty in the U.S. Navy during 1999–2005.

There is substantial evidence to support the SOR allegations that Applicant has a history of financial problems. Along with his admissions, the delinquent accounts are established by credit reports from September 2013 and November 2012. (Exhibits 6 and 7) The ten accounts are unresolved, as Applicant has not provided documentation showing they are paid, settled, in a payment plan, cancelled, forgiven, or otherwise resolved.

In his reply to the FORM, Applicant submitted documentation showing that he had received settlement offers for the debts in SOR ¶¶ 1.a and 1.b. (Exhibit A at 2–3) But he did not submit documentation showing actual proof of payment per those offers. He also asserted that the account in SOR ¶ 1.a was duplicated in SOR ¶¶ 1.d and 1.f. I examined the credit reports and find that those three accounts are separate and distinct accounts, and Applicant did not provide documentation showing otherwise. Finally, he asserted the accounts in SOR ¶¶ 1.c, 1.g, 1.h, 1.i, and 1.j were settled or will be settled in the near future, but provided no documentation to support his assertion. To reiterate, based on the available information, the ten accounts in the SOR are unresolved.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁵ 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.”⁶ 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.⁷ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁸

⁵ *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).

⁶ 484 U.S. at 531.

⁷ Directive, ¶ 3.2.

⁸ Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁰ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹¹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹² In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹³ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁴

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.¹⁵ 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,¹⁶ 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.¹⁷ The overall concern is:

⁹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁰ Directive, Enclosure 3, ¶ E3.1.14.

¹¹ Directive, Enclosure 3, ¶ E3.1.15.

¹² Directive, Enclosure 3, ¶ E3.1.15.

¹³ *Egan*, 484 U.S. at 531.

¹⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁵ Executive Order 10865, § 7.

¹⁶ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁷ 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.¹⁸

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—the ten delinquent debts that are unresolved—indicates inability or unwillingness to satisfy debts¹⁹ and a history of not meeting financial obligations.²⁰ The facts are more than sufficient to establish these two disqualifying conditions.

There are six mitigating conditions under Guideline F.²¹ I have considered all six in light of the facts and circumstances here, and none, individually or in combination, are sufficient to explain, extenuate, or mitigate the security concern. In reaching this conclusion, I specifically considered Applicant's periods of unemployment and underemployment. (Exhibit 5 at 10, 12) The available information shows that Applicant has taken little affirmative action to resolve his delinquent debts. His promises to pay in the future and his good intentions are not sufficient to apply any of the mitigating conditions.

With that said, a security clearance case is not aimed at collecting debts or enforcing tax laws.²² 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 a 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

omitted).

¹⁸ AG ¶ 18.

¹⁹ AG ¶ 19(a).

²⁰ AG ¶ 19(c).

²¹ AG ¶¶ 20(a)–(f).

²² ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

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.²³

Based on the available evidence, Applicant has not taken enough significant actions to mitigate the security concern under Guideline F. In light of the facts and circumstances here, the record evidence presents uncertainty, and that uncertainty equates to doubt about Applicant's fitness for access to classified information.

After weighing the relevant disqualifying and mitigating conditions and evaluating the evidence in light of the whole-person concept,²⁴ I conclude Applicant did not present sufficient evidence to explain, extenuate, and mitigate the Guideline F security concern. Accordingly, Applicant has not 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:	Against Applicant
Subparagraphs 1.a–1.j:	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 access to classified information.

Michael H. Leonard
Administrative Judge

²³ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

²⁴ AG ¶ 2(a)(1)–(9).