



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



In the matter of:)
)
-----) ISCR Case No. 14-00527
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

08/12/2014

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 March 27, 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 April 14, 2014, and requested a hearing. About a week later on April 22, he changed his mind and requested a decision based on the written record.² Likewise, Department Counsel did not request a hearing.

On June 25, 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 July 11, 2014. Applicant replied to the FORM on or about July 29, 2014, which was within the 30-day period allowed by the Directive. His reply consists of an one-page memorandum and an one-page receipt, both of which are admitted without objections as Exhibits A and B. The case was assigned to me August 6, 2014.

Ruling on Evidence

Department Counsel's brief, at pages 5-7, has an extensive discussion of facts and circumstances surrounding Applicant's interview during a background investigation (also known as a subject interview) in September 2013. I have not considered those matters for the reasons discussed below.

In a typical security clearance case, a subject interview is summarized in a report of investigation (ROI), and the ROI is sometimes offered as an evidentiary exhibit either at a hearing or as part of a FORM. Under the rules that govern these cases, a report of investigation may be received and considered as evidence when it is authenticated by a witness, provided it is otherwise admissible under the Federal Rules of Evidence.⁴ But here Department Counsel did not offer the ROI, which contains the summarized subject interview, as an exhibit; it was not listed in Department Counsel's brief as one of the ten documents in the FORM; and it was not otherwise presented as an exhibit. Therefore, the references to the subject interview of Applicant are from outside the record. Asserting factual matters from outside the record is clearly improper. Accordingly, all

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).

references in Department Counsel's brief to the September 2013 subject interview are inadmissible and will not be considered.

Findings of Fact

Applicant is a 43-year-old employee who is seeking to obtain a security clearance for his job as a refueller at a major shipyard. To that end, he submitted a security clearance application in July 2013, which is when he began his current job.⁵ His employment history includes the following: (1) working full-time as a motorcycle technician 2012–2013; (2) a period of self-employment during 2010–2012; and (3) active duty military service in the U.S. Navy during 1990–2010. There are no periods of unemployment listed in his security clearance application.

There is substantial evidence to support the SOR allegations that Applicant has a history of financial problems. His financial problems date back to approximately 2007–2008, which is when the U.S. Navy revoked the security clearance he held as a Sailor due to financial reasons and related personal conduct.⁶ The financial problems included a past-due account, seven collection accounts, and five unpaid judgments.

The current financial considerations concern stems from, as alleged in the SOR, 20 delinquent accounts consisting of seven unpaid judgments and 13 collection accounts for a total of about \$22,447. In his answer to the SOR, Applicant admitted 15 delinquent accounts and he denied 5 delinquent accounts for various reasons. The delinquent accounts are established by Applicant's admissions, by an August 2013 credit report, or by a June 2014 credit report, or by other records of judgment and lien filings.⁷

As discussed below, the evidence shows that Applicant has paid 10 of the 13 collection accounts; he is disputing 2 collection accounts; and 1 collection account is in a payment plan with a reduced balance. For the seven unpaid judgments, he is in compliance with a payment plan for one judgment and the other six remain unresolved without any supporting documentation. The accounts are discussed in the order alleged in the SOR.

(1) Applicant admits a judgment of \$7,400 was entered against him in March 2013, and he stated he is making payments. In his answer to the SOR, he presented documentation from the law firm handling the case indicating that he is on a payment

⁵ Exhibit 5.

⁶ Exhibit 10. Those matters were not alleged in the SOR, and so I have considered them for the limited purposes of assessing (1) the frequency and recency of Applicant's financial problems, and (2) the presence or absence of rehabilitation and other permanent behavior changes, which is permitted under the Directive's whole-person concept at ¶ 2(a)(1)–(9).

⁷ Exhibits 6, 7, and 8.

plan and is current on his monthly payments; the amount paid and the balance owed are unstated.

(2) Applicant admits a judgment of \$3,729 was entered against him in March 2012, and he stated he is making payments. But he did not present any documentation on this matter.

(3) Applicant admits a judgment of \$1,575 was entered against him in March 2011, and he stated he is making payments. But he did not present any documentation on this matter.

(4) Applicant admits a judgment of \$1,575 was entered against him in February 2011, and he stated he is making payments. But he did not present any documentation on this matter.

(5) Applicant admits a \$119 collection account, and he stated he paid it. The June 2014 credit report shows a zero balance for this account as well as that Applicant is disputing it after resolution.⁸

(6) Applicant admits a \$3,000 collection account, and he stated he paid it. In his answer to the SOR, he presented documentation showing the account was resolved in March 2014.

(7) Applicant admits a \$930 collection account, and he stated that it is in a six-month payment plan, which began in April 2014. He presented a receipt, dated June 30, 2014, showing that he has reduced the balance to \$465.⁹

(8) Applicant admits a \$667 collection account, and he stated that it is paid. The June 2014 credit report shows a zero balance for this account, that the account was paid for less than full balance, and that Applicant is disputing it after resolution.¹⁰

(9) Applicant denies a \$589 collection account, and he stated that it is due to identity theft. In his answer to the SOR, he presented documentation showing he disputed the account and it was removed from his credit report in January 2014.

(10) Applicant admits a \$388 collection account, and he stated that it is paid. In his answer to the SOR, he presented proof of payment in the amount of \$401 in March 2014.

⁸ Exhibit 8 at 2.

⁹ Exhibit B.

¹⁰ Exhibit 8 at 2.

(11) Applicant denies a \$355 collection account, and he stated that it is due to identity theft. In his answer to the SOR, he presented documentation showing he is disputing the account with the creditor as of April 2014.

(12) Applicant admits a \$121 collection account, and he stated that it is paid. In his answer to the SOR, he presented proof of payment in the amount of \$163 in December 2013. In addition, the account does not appear in the June 2014 credit report.

(13) Applicant admits a \$120 collection account, and he stated that it is paid. In his answer to the SOR, he presented proof of payment in the amount of \$128 in December 2013.

(14) Applicant admits a \$115 collection account, and he stated that it is paid. In his answer to the SOR, he presented proof of payment in full in March 2014.

(15) Applicant admits a \$111 collection account, and he stated that it is paid. In his answer to the SOR, he presented proof of payment in full in December 2013.

(16) Applicant admits a \$60 collection account, and he stated that it is paid. In his answer to the SOR, he presented documentation showing payment of about \$68 in January 2014. In addition, the account does not appear in the June 2014 credit report.

(17) Applicant admits a \$44 collection account, and he stated that it is paid. In his answer to the SOR, he presented documentation showing a zero balance as of December 2013. In addition, the June 2014 credit report shows this account was paid with a zero balance.

(18), (19), and (20) Applicant denies three unpaid judgments for \$538, \$435, and \$576, respectively. He stated that one belonged to his ex-wife and he claimed no knowledge of the other two. The three judgments are established by the records of judgment and lien filings. Applicant did not present any documentation on the judgments.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹¹ 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.”¹² Under *Egan*, Executive Order 10865, and the Directive, any doubt

¹¹ *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).

¹² 484 U.S. at 531.

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.¹³ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁵ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁶ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁷ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁸ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁹ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁰

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.²¹ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

¹³ Directive, ¶ 3.2.

¹⁴ Directive, ¶ 3.2.

¹⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁶ Directive, Enclosure 3, ¶ E3.1.14.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ *Egan*, 484 U.S. at 531.

²⁰ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²¹ Executive Order 10865, § 7.

Discussion

Under Guideline F for financial considerations,²² 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.²³ 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.²⁴

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 debts²⁵ and a history of not meeting financial obligations.²⁶ The facts are more than sufficient to establish these two disqualifying conditions.

In mitigation, the 13 collection accounts are largely resolved and no longer present a concern. Applicant mitigated the concern stemming from the collection accounts by initiating a good-faith effort to repay or otherwise resolve the collection accounts.²⁷

But the same cannot be said for the unpaid judgments, which account for \$15,828 of the \$22,447—about 70%—of delinquent debt in the SOR. The judgments are largely unresolved and present a concern. I have considered the six mitigating conditions under Guideline F in light of the facts and circumstances here, and none, individually or in combination, are sufficient to explain, extenuate, or mitigate the concern. The largely unresolved judgments, some dating back many years, remain, and

²² AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²³ 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).

²⁴ AG ¶ 18.

²⁵ AG ¶ 19(a).

²⁶ AG ¶ 19(c).

²⁷ AG ¶ 20(d).

Applicant has not presented a plan showing how he intends to resolve them. Given that his history of financial problems goes back to at least 2007–2008, it is difficult to predict with any degree of certainty if or when he will resolve the unpaid judgements.

With that said, a security clearance case is not aimed at collecting debts or enforcing tax laws.²⁸ 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 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.²⁹

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,³⁰ 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.

²⁸ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

²⁹ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

³⁰ AG ¶ 2(a)(1)–(9).

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.q:	For Applicant
Subparagraphs 1.r–1.t:	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