



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



In the matter of:)	
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)	ISCR Case No. 14-00716
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

08/13/2014

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 April 9, 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

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.

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 29, 2014. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

On June 9, 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 June 16, 2014. Applicant did not reply to the FORM within the 30-day period allowed under the Directive. The case was assigned to me August 11, 2014.

Findings of Fact

Applicant is a 40-year-old employee who is seeking to obtain a security clearance for his job as a pipe fitter. He submitted a security clearance application in August 2013. (Exhibit 5) His application shows the following: (1) he is married and has two minor children; (2) he has worked for his current employer since June 2013; and (3) he has had continuous full-time employment, albeit in different jobs, since 1997.

There is substantial evidence to support the SOR allegations that Applicant has a history of financial problems. In his answer to the SOR, Applicant admitting having eight delinquent debts for a total of about \$17,351. The debts consist of the following: (1) an unpaid judgment for \$5,775 entered in 2013; (2) five medical collection accounts for a total of \$3,895; (3) a \$6,634 charged-off account; and (4) a \$1,047 collection account. Along with his admissions, the delinquent accounts are established by credit reports from March 2014 and September 2013 as well as a court record concerning the unpaid judgment. (Exhibits 6–8)

The eight delinquent accounts are unresolved. Applicant has not provided any documentation showing they are paid, settled, in a payment plan, cancelled, forgiven, or otherwise resolved. Likewise, he did not present any documentation showing that his financial problems were due to circumstances largely beyond his control or that he has or is receiving financial counseling or advice.

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.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁴ 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.”⁵ 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.⁶ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁷

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁸ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁰ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹¹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹² The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹³

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

⁴ *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).

⁵ 484 U.S. at 531.

⁶ Directive, ¶ 3.2.

⁷ Directive, ¶ 3.2.

⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁹ Directive, Enclosure 3, ¶ E3.1.14.

¹⁰ Directive, Enclosure 3, ¶ E3.1.15.

¹¹ Directive, Enclosure 3, ¶ E3.1.15.

¹² *Egan*, 484 U.S. at 531.

¹³ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.¹⁴ 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,¹⁵ 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.¹⁶ 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.¹⁷

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 eight delinquent debts that are unresolved—indicates inability or unwillingness to satisfy debts¹⁸ and a history of not meeting financial obligations.¹⁹ The facts are more than sufficient to establish these two disqualifying conditions.

¹⁴ Executive Order 10865, § 7.

¹⁵ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁶ 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).

¹⁷ AG ¶ 18.

¹⁸ AG ¶ 19(a).

¹⁹ AG ¶ 19(c).

There are six mitigating conditions under Guideline F.²⁰ 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. The available information shows that Applicant has taken little affirmative action to resolve his delinquent debts.

With that said, a security clearance case is not aimed at collecting debts or enforcing tax laws.²¹ 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.²²

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,²³ 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.

²⁰ AG ¶¶ 20(a)–(f).

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

²² ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

²³ AG ¶ 2(a)(1)–(9).

