



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



In the matter of:)	
-----)	
)	ISCR Case No. 14-00788
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

09/29/2014

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. A 59-year-old construction superintendent, Applicant has a history of financial problems or difficulties that are unresolved and ongoing. He did not present sufficient evidence to explain and mitigate the financial considerations security concern. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a security clearance application on June 28, 2013. After reviewing Applicant’s application and the information gathered during a background investigation, the Department of Defense (DOD), on April 14, 2014, sent him a statement of reasons (SOR), explaining it was unable to find that it was clearly

consistent with the national interest to grant him access to classified information.¹ The SOR is similar to a complaint. It detailed the reasons for the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR, in writing, on May 5, 2014.

The case was assigned to me July 30, 2014, to conduct the hearing requested by Applicant. The hearing was held as scheduled on August 27, 2014. At the hearing, Department Counsel presented Exhibits 1–3, which were admitted. Applicant testified, called no other witnesses, and presented Exhibits A–M, which were admitted.² The transcript (Tr.) was received September 8, 2014.

Ruling on Procedure

In answering the SOR, Applicant relied upon a state statute of limitations to assert that 10 of the 12 debts alleged in the SOR were unenforceable. By definition, a statute of limitations is simply a law that establishes a time limit for being sued or for prosecuting a crime. Applicant referred to an unspecified statute of limitations in the Arizona Revised Statutes, but I presume he is referring to the six-year limitation under § 12-548 for a debt collection action based on a written contract or credit card. At the close of the hearing, I explained to Applicant that a state statute of limitations was not binding on a federal security clearance case.³

Indeed, the DOHA Appeal Board addressed this very point in a case involving the Arizona statute of limitations as follows:

Applicant's reliance on the unenforceability of his debts under the Arizona statute of limitations fails to demonstrate that the Judge erred. Security clearance decisions are not controlled or limited by such statutes of limitations. A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Accordingly, even if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and

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 Exhibit C was admitted provisionally or conditionally, because it was in incomplete copy of Applicant's Social Security Statement and Earnings Record. After the hearing, Applicant provided a complete copy, and Exhibit C is admitted without objections.

³ Tr. 103–106.

circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.⁴

Based on that authority, I have not considered or decided if 10 of the 12 debts in the SOR are legally unenforceable under the applicable Arizona statute of limitations. Accordingly, I will not discuss Applicant Exhibits F, G, H, I, K, and L, which were offered to show the applicability of the state statute of limitations.⁵ In addition, Exhibit E will not be discussed because it concerns a student loan account for Applicant's former daughter-in-law, which is not alleged in the SOR.⁶

Findings of Fact

Applicant is a 59-year-old employee who is seeking a security clearance.⁷ He recalls that he held a security clearance in the 1980s when he performed work for the State Department. He is employed as a construction or project superintendent for a federal contractor. He has held this job since October 2012. He earns a base pay of \$99,000 annually and he has the opportunity to earn overtime at an increased rate.⁸ He stated that his current income is sufficient to provide a safety net, and he estimated having a positive net remainder of about \$2,000 monthly.⁹

Applicant is the primary breadwinner in his household, which consists of his spouse, a 35-year-old daughter and her two children under the age of ten. Applicant's spouse is retired and receives about \$780 monthly in Social Security benefits.¹⁰ A victim of domestic violence, his adult daughter is unable to work due to a serious head injury for which the perpetrator is serving prison time.¹¹ His daughter does not yet receive Social Security disability benefits, but she receives various financial benefits from the state. As a result, Applicant provides "very limited" financial support to his daughter and grandchildren; the support is beyond what would be normal for grandparents.¹²

⁴ ISCR Case No. 07-09966 at 3 (App. Bd. Jun. 25, 2008) (citations omitted).

⁵ Tr. 62.

⁶ Tr. 35–40.

⁷ Exhibit 1 (security clearance application, dated Jun. 28, 2013, which is also known as an e-QIP).

⁸ Tr. 72.

⁹ Tr. 91–92.

¹⁰ Tr. 89.

¹¹ Tr. 79–81; 97–98.

¹² Tr. 80–81.

Applicant's employment history includes a number of years in which he did not work and had no earned income. In his security clearance application, he reported a period of unemployment from January 2001 to September 2008.¹³ At the hearing, he explained that he elected not to work, and he and his spouse relied on income received from royalty payments from a product he invented and had patented.¹⁴ Applicant's lack of earned income during this period is verified by his Social Security statement, which shows zero earnings for tax years 2001–2007.¹⁵

In early 2008, Applicant's financial situation was still stable as shown by a January 2008 credit report.¹⁶ The credit report lists a single adverse account that was past due once for 30 days. Otherwise, all accounts were rated satisfactory.

Applicant returned to work in 2008 because income from royalty payments ceased in about 2005.¹⁷ He worked as a superintendent for an engineering contractor from September 2008 to February 2011, when he was terminated. He was then unemployed for about a year until March 2012, when he accepted a position as a project superintendent for a mining company. He left that job in August 2012 and he was briefly unemployed while making the transition to his current job, which he started in October 2012.

Applicant's earnings during this period consist of the following: (1) for 2008, he had taxable Social Security earnings of \$21,943; (2) for 2009, he had taxable Social Security earnings of \$78,943; (3) for 2010 and 2011, there is no information available; (4) for 2012, he had an adjusted gross income of \$71,609; and (5) for 2013, he had an adjusted gross income of \$104,768.¹⁸

The SOR alleges and there is substantial evidence to show that Applicant has a history of financial problems or difficulties that are unresolved and ongoing. The 12 delinquent debts in the SOR total about \$201,808 and consist of the following: (1) an unpaid judgment entered against Applicant in 2013 for \$20,750; (2) two medical collection accounts for a total of \$791; (3) seven collection or charged-off accounts for a total of \$92,240; and (4) two student loan accounts in collection for a total of \$88,027. The 12 delinquent debts are established by credit reports from October 2013 and March 2014.¹⁹

¹³ Exhibit 1.

¹⁴ Tr. 64–67.

¹⁵ Exhibit C.

¹⁶ Exhibit D.

¹⁷ Tr. 67–69; 72.

¹⁸ Exhibits A, B, and C.

¹⁹ Exhibits 2 and 3.

In his answer to the SOR, Applicant denied a \$41 medical collection account (SOR ¶ 1.f) on the basis that he had no records of such an account. And he denied a \$750 medical collection account (SOR ¶ 1.i) on the basis it was paid. At the hearing, he presented no documentation to support the denial of the minor collection account, but he had proof of payment for the \$750 medical collection account.²⁰ In addition, the most recent credit report from March 2014 shows payment of a \$4,793 medical collection account.²¹ Otherwise, Applicant presented no documentation showing that he had paid, settled, entered into a repayment agreement, disputed, or otherwise resolved the other 11 delinquent debts.

Applicant is currently engaged in a compulsory arbitration proceeding stemming from a collection lawsuit in which he and his wife are defendants.²² The lawsuit is seeking to collect \$28,258 on a credit card account (this debt is alleged in SOR ¶ 1.e). The complaint was filed in June 2014. The arbitration hearing is scheduled for mid-September 2014, and Applicant intends to represent himself.²³

In his answer to the SOR and at the hearing, Applicant attributed his indebtedness to the 2007–2008 recession, underemployment, and unemployment. He explained that he has not incurred new debt since 2008. He further explained that, other than the two medical collection accounts and the two student loans, the remaining eight debts were incurred for the purpose of building and finishing their current home, which began in about 2000 and was completed in 2004; these were debts above and beyond the initial construction loan.²⁴ He fell behind on paying the credit accounts sometime in 2008 due to the lack of royalty income.²⁵

Applicant obtained the two student loans, the first in 2009 and the second in 2010, to pay for attending a local college as well as living expenses during his attendance.²⁶ He did so in an effort to improve his job skills and marketability, but he did not complete the degree and returned to work.

Throughout this time (2008 and forward), Applicant's focus was on servicing his secured debt; namely, the mortgage loans for the house he and his spouse had built

²⁰ Exhibit M.

²¹ Exhibit 3 at 1.

²² Exhibit J.

²³ Tr. 55.

²⁴ Tr. 74–75.

²⁵ Tr. 75.

²⁶ Exhibit 3.

and were occupying along with his daughter and two grandchildren.²⁷ He sold what he described as a collection of classic cars for about \$100,000, and used the proceeds for living expenses and mortgage loan payments.²⁸ He fell behind on his mortgage for about six to eight months.²⁹ He disclosed this matter in his security clearance application, indicated that the financial issue began in about February 2011, and was resolved in about June 2013 by a loan modification.³⁰ He stated that the mortgage loans are now current.³¹

Applicant's intention or plan to resolve the unsecured delinquent debts is to handle them through a legal process, in order to make certain that the creditor who is seeking to collect is in fact the creditor entitled to the money.³² To that end, he intends to obtain legal counsel to assist him, but he has not done so to date.

Law and Policies

It is well-established law that no one has a right to a security clearance.³³ 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."³⁴ 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.³⁵ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.³⁶

²⁷ Tr. 53; 77.

²⁸ Tr. 76–77.

²⁹ Tr. 92.

³⁰ Exhibit 1 at 37

³¹ Tr. 69–71.

³² Tr. 57; 62–63; 89–90; 93–95; and 98–100.

³³ *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).

³⁴ 484 U.S. at 531.

³⁵ Directive, ¶ 3.2.

³⁶ Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.³⁷ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁴⁰ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁴¹ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.⁴²

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.⁴³ 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,⁴⁴ 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.⁴⁵ The overall concern is:

³⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³⁸ Directive, Enclosure 3, ¶ E3.1.14.

³⁹ Directive, Enclosure 3, ¶ E3.1.15.

⁴⁰ Directive, Enclosure 3, ¶ E3.1.15.

⁴¹ *Egan*, 484 U.S. at 531.

⁴² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁴³ Executive Order 10865, § 7.

⁴⁴ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

⁴⁵ 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.⁴⁶

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

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. Taken together, the unpaid judgment, the seven collection and charged-off accounts, and the two student loans in collection indicate inability or unwillingness to satisfy debts⁴⁷ and a history of not meeting financial obligations⁴⁸ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions, and the facts also suggest a degree of financial irresponsibility.

With that said, I attach no security significance to the \$41 medical collection account, which Applicant disputes. Although he did not document the dispute, the debt is so minor that it is of no consequence. In addition, Applicant documented his payment of the \$750 medical collection account. For those reasons, the medical collection accounts in SOR ¶¶ 1.f and 1.i are decided for Applicant.

In mitigation, I have considered six mitigating conditions under Guideline F,⁴⁹ and none, individually or in combination, is sufficient to mitigate the concern stemming from Applicant's ongoing and unresolved financial problems. He is facing a mountain of delinquent debt, about \$200,000; he has not serviced any of this debt since sometime in 2008; and he is currently being sued for collection of one of the larger debts in the SOR. His plan to deal with his indebtedness does not appear to be proactive or achievable in the foreseeable future. And he has yet to retain legal counsel to assist him.

Although Applicant stated otherwise,⁵⁰ it is apparent to me that his plan involves waiting to be sued for collection of a debt, addressing it through the court system, relying on his state's six-year statute of limitations, and otherwise waiting for the adverse accounts to age off his credit report. Those actions are perfectly legal, but they can hardly be described as making a good-faith effort to repay or resolve one's debts.

omitted).

⁴⁶ AG ¶ 18.

⁴⁷ AG ¶ 19(a).

⁴⁸ AG ¶ 19(c).

⁴⁹ AG ¶ 20(a)–(f).

⁵⁰ Tr. 99-100.

Understandably, he has focused on making the mortgage loan payments for the last several years, and he deserves credit for successfully modifying the mortgage loan. But there is no indication of a realistic plan to address the \$200,000 in delinquent debt, which is debt (minus the student loans) incurred to build and finish the home he now occupies. Likewise, he has taken no action to resolve the delinquent student loans, which (along with income taxes and child support) I consider to be high-priority debt.

Of course, the purpose of this case is not aimed at collecting debts.⁵¹ 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 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.⁵²

Here, the evidence does not support a conclusion that Applicant has established a plan and taken steps to implement that plan sufficient to mitigate the concern.

Applicant's problematic financial history raises doubt about his reliability, trustworthiness, and good judgment. Following *Egan* and the clearly-consistent standard, I resolve that doubt in favor of protecting national security. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.⁵³ In doing so, I considered Applicant's favorable evidence. Nonetheless, the favorable matters are not enough to justify a conclusion that he met his ultimate burden of persuasion to obtain a favorable clearance decision.

⁵¹ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

⁵² ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

⁵³ 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.e:	Against Applicant
Subparagraphs 1.f, 1.i:	For Applicant
Subparagraphs 1.g, 1.h, 1.j, 1.k, 1.l:	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 a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge