



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



In the matter of:)
)
 -----) ISCR Case No. 14-00806
)
 Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
 For Applicant: *Pro se*

11/19/2014

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his security clearance to work in the defense industry. A 37-year-old field engineer, Applicant has a history of financial problems or difficulties. He met his burden to present sufficient evidence to explain and mitigate the financial considerations security concern. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a security clearance application on December 8, 2011.¹ After reviewing the application and information gathered during a background investigation, the Department of Defense (DOD), on April 11, 2014, sent Applicant 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

¹ Exhibit 1.

information.² 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 on May 30, 2014, and he subsequently requested a hearing on September 8, 2014.

The case was assigned to me October 1, 2014, to conduct the hearing requested by Applicant. The hearing was held as scheduled on October 29, 2014. The transcript (Tr.) was received November 6, 2014.

Findings of Fact

Applicant is a 37-year-old employee who is seeking to retain a security clearance. He is employed as a field engineer for a federal contractor. His current annual salary is about \$65,000, although he anticipates an across-the-board pay cut at his company. He has held this job since about August 2010.³ He was honorably discharged from active duty in the U.S. Army at the end of March 2010,⁴ and he was then unemployed until he started his current job.

Applicant has served approximately 16 years active and reserve duty in the U.S. military. His military service includes a deployment to Bosnia in 1999, and deployments to Iraq with one of the Army's combat divisions during 2004–2005, 2006–2007, and 2009–2010.⁵ He stated that he was subject to direct fire on eight to ten occasions, he was never wounded or injured, and he is not suffering from PTSD or a similar condition. He has a claim pending for service-connected disability compensation with the Department of Veterans Affairs.

The SOR alleges and there is substantial evidence to show that Applicant has a history of financial problems or difficulties.⁶ In his answer to the SOR, he admitted each of the debts alleged. The delinquent debts are grouped together and discussed as follows: (1) back taxes owed to the IRS for \$21,192 and \$14,498 for tax years 2011 and 2012, respectively; (2) a \$9,817 collection account stemming from the purchase of a water purification system; and (3) six miscellaneous accounts consisting of a \$76 past-

² 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.

³ Exhibit S.

⁴ Exhibits T and U.

⁵ Exhibit T.

⁶ Exhibits 2-8, and 10.

due account, four charged-off accounts for a total of \$3,584, and a \$697 collection account.

(1) The back taxes owed the IRS for tax years 2011 and 2012 are alleged in SOR ¶¶ 1.a and 1.b. Applicant explained this indebtedness is the result of his overseas deployments in support of the U.S. armed forces as a defense contractor during 2011–2012. He worked in Iraq in 2011 and in Afghanistan in 2012. During the deployments he earned a higher income and received other benefits (e.g., danger pay) that resulted in a higher taxable income. For example, his taxable income in 2012 was nearly \$110,000, which is far more than he earned as an active duty soldier.⁷ Moreover, insufficient funds were withheld for tax payments. Before 2011-2012, he had no tax problems; he submitted IRS account transcripts for tax years 2008–2010 that reflect zero balances and no outstanding or irregular matters.⁸

Applicant realized he was out of his depth and sought professional advice and assistance to resolve the back taxes. In September 2013, he retained the services of a firm specializing in tax matters.⁹ Working with a CPA, Applicant submitted an offer in compromise to the IRS the same month. The IRS denied the offer in compromise in May 2014, and sent the case back for collection.¹⁰

Applicant and the CPA then provided additional financial information to the IRS to establish a repayment agreement. In September 2014, the IRS accepted the offer to enter into a direct debit installment agreement, with the first monthly payment of \$110 to be deducted on October 28, 2014.¹¹ Before the agreement was accepted, he made payments of \$110 in July, August, and September 2014.¹² In addition, he timely filed his 2013 federal income tax return, which resulted in a refund of \$1,736.¹³ The refund was applied to the balance for tax year 2011.¹⁴

(2) SOR ¶ 1.d alleged the \$9,817 collection account, which is still outstanding. Applicant explained the debt stems from the purchase of a water purification system.¹⁵

⁷ Exhibit A.

⁸ Exhibit A.

⁹ Exhibits A and B.

¹⁰ Exhibit J.

¹¹ Exhibit J.

¹² Exhibit J.

¹³ Exhibit A.

¹⁴ Exhibit J.

¹⁵ Tr. 58–63; Exhibits D and L.

He and his then wife bought the system for the benefit of a child who has a skin condition that requires pure water. The system stopped working, and Applicant was unable to get the system repaired, replaced, or removed, and so he stopped paying on the account. He has been in telephone contact with the creditor, a finance company, but he has been unable to enter into a settlement agreement with terms he can meet. In the meantime, he is making \$100 monthly payments on the debt until such time as he has sufficient funds to settle the account.

(3) The six miscellaneous accounts consisting of a \$76 past-due account, four charged-off accounts for a total of \$3,584, and a \$697 collection account are alleged in SOR ¶¶ 1.c and 1.e–1.i. These accounts are resolved. Applicant provided extensive documentation showing the accounts were paid or settled.¹⁶

In addition to the above matters, Applicant provided proof of payment for a collection account not alleged in the SOR, but which formed the basis for an adverse incident report to security officials in 2011.¹⁷ The last payment was made in July 2012, and the account now has paid-in-full charge-off status.

Applicant is divorced from his first wife, with whom he has two minor children. He pays child support at the rate of \$870 monthly. He stated that he is current with the child support, which is deducted from his pay check, as well as other recurring monthly bills. He stated that he is now more careful with his money, he no longer uses credit cards, and he saves cash if he wants to make a sizeable purchase. He intends to sell or rent the former marital home, which should make additional money available for debt repayment.

At the hearing, Applicant was serious and respectful, and he answered questions without equivocation. I was favorably impressed by Applicant and had no concerns about his credibility.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁸ 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

¹⁶ Exhibits C, E, F, G, H, I, K, M, N, O, P, and Q.

¹⁷ Exhibit R and Exhibit 10.

¹⁸ *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).

side of denials.”¹⁹ 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.²⁰ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²¹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²² The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²³ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁴ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁵

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁶ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁷

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

¹⁹ 484 U.S. at 531.

²⁰ Directive, ¶ 3.2.

²¹ Directive, ¶ 3.2.

²² ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²³ Directive, Enclosure 3, ¶ E3.1.14.

²⁴ Directive, Enclosure 3, ¶ E3.1.15.

²⁵ Directive, Enclosure 3, ¶ E3.1.15.

²⁶ *Egan*, 484 U.S. at 531.

²⁷ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

person a security clearance is not a determination of an applicant's loyalty.²⁸ 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,²⁹ 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.³⁰ 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.³¹

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 evidence indicates inability or unwillingness to satisfy debts³² and a history of not meeting financial obligations³³ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions, and the facts also suggest a degree of inattention or irresponsibility.

In mitigation, I have considered six mitigating conditions under Guideline F,³⁴ and I have especially considered the following as most pertinent:

²⁸ Executive Order 10865, § 7.

²⁹ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

³⁰ 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).

³¹ AG ¶ 18.

³² AG ¶ 19(a).

³³ AG ¶ 19(c).

³⁴ AG ¶ 20(a)–(f).

AG ¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved and is under control; and

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

The mitigating condition in AG ¶ 20(a) applies because Applicant's tax problems occurred in the limited period of tax years 2011–2012 when he was working as a defense contractor overseas in Iraq and Afghanistan. That is a circumstance that is unlikely to recur. Moreover, it does not cast doubt on Applicant's current security suitability because he has entered into a repayment agreement with the IRS to resolve the back taxes.

The mitigating condition in AG ¶ 20(c) applies because there are clear indications that Applicant's financial problems are being resolved and are under control. Importantly, Applicant is not incurring new delinquent debt. He has also taken steps to reduce his delinquent debt. He entered into a repayment agreement with the IRS to resolve the back taxes, he is making monthly payments on the unresolved collection account, which he hopes to settle, and he paid or settled the six miscellaneous accounts. Taken together, these circumstances show a favorable upward trend.

The mitigating condition in AG ¶ 20(d) applies under essentially the same rationale as discussed above for AG ¶ 20(c).

Applicant's financial record is less than perfect. But the evidence also supports a conclusion that he has established a meaningful track record through actual debt reduction. He also has a plan to resolve the back taxes and the remaining collection account and has taken steps to implement that plan.

Applicant's history of financial problems does not justify current doubt about his reliability, trustworthiness, good judgment, and ability to protect classified information. 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.³⁵ In particular, I considered Applicant's multiple deployments to Iraq and Afghanistan, as both a soldier and a contractor, as significant in my analysis. Applicant's willingness to go in harms way on behalf of his country is highly favorable evidence. Accordingly, I conclude that he has met his

³⁵ AG ¶ 2(a)(1)–(9).

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

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