



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



In the matter of:)	
)	
)	ISCR Case No. 14-00869
Applicant for Security Clearance)	

Appearances

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

10/01/2014

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 33-year-old employee of a defense contractor, Applicant has financial problems or difficulties that are ongoing and unresolved. In addition, there are allegations of criminal conduct in 2007 and 2012 that are not sufficiently rebutted and explained. He did not present sufficient evidence to rebut, explain, or mitigate the security concerns. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a security clearance application on November 22, 2013. After reviewing Applicant’s application and the information gathered during a background investigation, the Department of Defense (DOD), on April 30, 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 guidelines known as Guideline F for financial considerations and Guideline J for criminal conduct. Applicant answered the SOR, in writing, on June 10, 2014, and on July 1, 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 26, 2014. At the hearing, Department Counsel presented Exhibits 1–6, which were admitted except for Exhibit 3. Applicant testified, called one witness (his mother), and presented Exhibits A–G, which were admitted except for Exhibit B. The transcript (Tr.) was received September 4, 2014.

The record was kept open until September 9, 2014, to allow Applicant an opportunity to submit additional documentary evidence on the financial and criminal matters.² To date, no such matters were received.

Rulings on Procedure and Evidence

Department Counsel moved to amend the allegation in SOR ¶ 2.a by deleting the word and figure “May 2010” and substituting the word and figure “May 2007.”³ Without objections, the motion was granted.

Government Exhibit 3 was not admitted. It is a subject interview of Applicant that was summarized in a report of investigation from a January 2014 background investigation. Applicant objected to the exhibit, and Department Counsel was unable to authenticate the exhibit as an accurate summary of Applicant’s interview during the background investigation.⁴ Since it was not admitted, I have not considered it in deciding this case.

Government Exhibit 5 was admitted over Applicant’s objection. It is a signed, sworn statement by Applicant in December 2003 during a previous background investigation. It was admitted for limited purpose of showing that Applicant’s financial problems go back further than what is alleged in the SOR.

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 Tr. 131–133.

³ Tr. 19–21.

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).

Applicant Exhibit B was not admitted. It was offered and marked and then withdrawn by Applicant. It is not part of the record.

Findings of Fact

Applicant is a 33-year-old employee who is seeking to retain a security clearance previously granted to him.⁵ He is employed as warehouse identification production specialist who works in supply-chain management. He has held a full-time job with the same company, a major defense contractor, since June 2002. There is some evidence that he has a good record of employment.⁶ He currently earns \$21.81 per hour. He is living paycheck-to-paycheck, as he admitted having about \$100 on hand as his only financial asset with the next payday a week away.⁷

Applicant married in 2007, and he and his spouse have two children, daughters, ages two and seven. Applicant and his wife have separated several times, he describes his marriage as “rocky,” and they are currently separated.⁸ His daughters are living with their mother and he is living with his mother. He stated that he provides financial support to his wife and children, but he did not present any documentation on that point.

The SOR alleged and there is substantial evidence to show that Applicant has financial problems or difficulties that are ongoing and unresolved. The eight delinquent debts in the SOR total about \$6,388 and consist of (1) an unpaid judgment entered against Applicant in 2010 for \$1,000, and (2) seven collection accounts for about \$5,388. The delinquent debts are established by a December 2013 credit report.⁹ In addition to his current financial problems, there is evidence that he was having similar financial problems when he went through his initial background investigation in December 2003.¹⁰

The SOR also alleged, without details as to amounts, that Applicant failed to pay federal income taxes, as required, for tax years 2011 and 2012, and that he failed to file a return and pay state income taxes for tax year 2011. The tax matters are established by Applicant’s admissions in his answer to the SOR.

⁵ Exhibit 1 (security clearance application, signed Nov. 22, 2013, which is also known as an e-QIP).

⁶ Exhibit A.

⁷ Tr. 128–130.

⁸ Tr. 111.

⁹ Exhibit 2.

¹⁰ Exhibit 5.

This table addresses each delinquent debt and briefly discusses the debt's current status based on the available documentary evidence and Applicant's statements.

Debt Alleged in SOR	Current Status
SOR ¶ 1.a—unpaid \$1,000 judgment entered against Applicant in Nov. 2010 stemming from an apartment lease.	Unpaid; no documentation. Intends to seek counsel. Tr. 115–119.
SOR ¶ 1.b—\$1,320 collection account stemming from television account.	Admits owing at least \$400; no documentation. Tr. 119–120.
SOR ¶ 1.c—\$1,562 collection account stemming from a fine owed to a city court.	Unpaid; no documentation. Intends to seek counsel. Tr. 120–121.
SOR ¶ 1.d—\$1,123 collection account stemming from a cell phone account.	Unpaid; no documentation. Tr. 121–122.
SOR ¶ 1.e—\$723 collection account stemming from a payday-loan business.	Settled in full for \$490 in October 2011. Tr. 51–53.
SOR ¶ 1.f—\$299 collection account stemming from a fine owed a city court.	Unpaid (since 2006); no documentation. Tr. 122–125.
SOR ¶ 1.g—\$104 medical collection account.	Stated it was paid, but no documentation of proof of payment. Tr. 125.
SOR ¶ 1.h—\$257 collection account stemming from a bottled water account.	Stated it was paid, but no documentation of proof of payment. Tr. 125–126

In summary, I specifically find that the debt in SOR ¶ 1.e was settled in October 2011, but I find that the other seven accounts are unpaid and unresolved given the lack of documentation.

In addition, Applicant presented proof of payment of two collection accounts that were not alleged in the SOR but were listed as paid collection accounts in the December 2013 credit report.¹¹ He paid a \$175.50 medical collection account in March 2011, and he paid a collection account of an unknown amount stemming from an overdrawn checking account in April 2012.¹² Likewise, the December 2013 credit report shows two additional paid collection accounts of unknown amounts.¹³

¹¹ Exhibit 2.

¹² Exhibits C and D.

¹³ Exhibit 2 at 7.

Concerning the tax matters alleged in the SOR, Applicant did not present any documentation concerning his state or federal income taxes.¹⁴ He stated that he has filed the state and federal tax returns for tax years 2011 and 2012 as well as last year in 2013. I specifically find the tax matters are unresolved given the lack of documentation.

The SOR alleged and there is substantial evidence to show that there are allegations of criminal conduct against Applicant from 2007 and 2012. An FBI identification record¹⁵ shows that Applicant was arrested or charged or both in two separate matters. First, in May 2007, he was arrested or charged with three counts of driving under the influence of alcohol (DUI), prohibited fireworks, driving with a suspended license and FTA/FTP, and two counts of violation of promise to appear. Second, in June 2012, he was arrested or charged with the offenses of narcotic drug violation and failure to appear, second degree. Other than driving with a suspended license, Applicant denies these matters and contends the information in the FBI identification record is mistaken due to clerical error.¹⁶

During the hearing, Applicant explained he was pulled over by the police in May 2007 for an equipment violation and was cited for driving on a suspended license.¹⁷ He stated he performed community service in lieu of a fine and the matter was resolved. He did not present any paperwork, from the police, the court, or an attorney, to verify his explanation.

Applicant further explained that about five years later in June 2012 he obtained another citation for driving on a suspended license and was placed under arrest.¹⁸ In support of his explanation, he submitted Exhibits E, F, and G, which are discussed below.

Exhibit G is a state traffic ticket and complaint listing Applicant as the defendant for the criminal traffic offense of driving on a suspended license. The date of offense is June 28, 2012, with a court date of July 23, 2012. It lists no other charges or offenses. Exhibits G-1, G-2, and G-3 show Applicant was allowed to perform 50 hours of community service in lieu of fine payments, which he completed during the months of July–October 2012, and then the case was closed in November 2012.

Exhibit E is a court record stating conditions of release and order, signed by a state judge on June 29, 2012 (which is the day after the June 28, 2012 charges listed in the FBI identification record). It is a fill-in-the-blank document, it is not entirely clear, but

¹⁴ Tr. 113–115.

¹⁵ Exhibit 4.

¹⁶ Tr. 79–80.

¹⁷ Tr. 70–72.

¹⁸ Tr. 72–73.

it does list Applicant as the defendant as well as abbreviations for the driving with a license suspended offense (DLS) and three DUI offenses. It also notes that a motion to dismiss was filed, and there is a handwritten notation of “dismissed” on the document. Applicant stated that he received Exhibit E in court upon his release.¹⁹

Exhibit F is a court record—an appearance order with release conditions from the courts of the same county as Exhibit E. It was signed by a same state judge, on June 29, 2012, who signed Exhibit E. It is a fill-in-the-blank document, and it lists Applicant as the defendant and shows he was charged with a violation of § 13-3408 of the state law, which is an offense involving possession, use, administration, acquisition, sale, manufacture or transportation of narcotic drugs, all felony offenses.²⁰ It also shows that Applicant was released, a public defender was appointed to represent him, and the next event was a preliminary hearing.

Exhibits F-1 and F-2 are letters from the court-appointed public defender. The first letter advises Applicant that he is scheduled for a preliminary hearing that could lead to indicting or bringing formal charges against him. The second letter advises Applicant that the felony charges that had been filed against him were dismissed due to the need for further investigation and there was no need to appear at the preliminary hearing. In addition, the letter advised Applicant that it was possible that the charges could be brought against him at a later date.

Applicant does not possess a valid driver’s license; it was suspended due to unpaid traffic fines.²¹ He stated that the last time he had a valid driver’s license was for a short time in mid-2012.²² Under cross-examination by Department Counsel, Applicant admitted that he continues to drive with a suspended license, but then changed his statement and said he does not drive.²³ In addition, his mother stated that she is unable to drive due to health issues and she needed her son’s help to make a trip to Mexico so she can inspect and put a family house on the market, the proceeds of which will be used to help her son pay his delinquent debts.²⁴

¹⁹ Tr. 74–75.

²⁰ I took administrative notice of this state law as set forth in Government Exhibit 6. Tr. 134–141.

²¹ Tr. 100-102. Because these matters were not alleged in the SOR, I have considered them for the limited purpose of (1) assessing the presence or absence of rehabilitation and other permanent behavior changes, (2) assessing the likelihood of continuation or recurrence of similar criminal conduct, and (3) assessing Applicant’s credibility.

²² Tr. 126–127.

²³ Tr. 127–128.

²⁴ Tr. 60–64.

Law and Policies

It is well-established law that no one has a right to a security clearance.²⁵ 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.”²⁶ 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.²⁷ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁸

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³⁰ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³¹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³² In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³³ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.³⁴

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

²⁵ *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).

²⁶ 484 U.S. at 531.

²⁷ Directive, ¶ 3.2.

²⁸ Directive, ¶ 3.2.

²⁹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³⁰ Directive, Enclosure 3, ¶ E3.1.14.

³¹ Directive, Enclosure 3, ¶ E3.1.15.

³² Directive, Enclosure 3, ¶ E3.1.15.

³³ *Egan*, 484 U.S. at 531.

³⁴ 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.³⁵ 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,³⁶ 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.³⁷ 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.³⁸

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 multiple collection accounts, and the unresolved tax matters indicate inability or unwillingness to satisfy debts³⁹ and a history of not meeting financial obligations⁴⁰ 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.

³⁵ Executive Order 10865, § 7.

³⁶ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

³⁷ 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).

³⁸ AG ¶ 18.

³⁹ AG ¶ 19(a).

⁴⁰ AG ¶ 19(c).

In mitigation, I have considered the six mitigating conditions under Guideline F,⁴¹ 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 relatively small amount of delinquent debt, but he has made only irregular payments (e.g., the four paid collection accounts and the single instance of settlement), and he lacks the financial means to take any affirmative action in the near future. Moreover, his plan to deal with his indebtedness, by using proceeds from the sale of his mother's home in Mexico, is speculative. It is difficult to know if or when that event will take place.

Of course, the purpose of this case is not aimed at collecting debts or enforcing tax laws.⁴² 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.⁴³

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.

Under Guideline J for criminal conduct,⁴⁴ the concern is that criminal activity creates doubt about a person's judgment, reliability, and trustworthiness, and calls into question a person's ability or willingness to follow laws, rules, and regulations. In this case, there is substantial evidence to show that there were allegations of serious

⁴¹ AG ¶ 20(a)–(f).

⁴² ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

⁴³ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

⁴⁴ AG ¶¶ 30, 31, and 32 (setting forth the security concern and the disqualifying and mitigating conditions).

criminal conduct against Applicant. First, an FBI identification record⁴⁵ shows that Applicant was arrested or charged in 2007 and 2012 for the various offenses, including a felony drug offense, as discussed in the findings of fact. Second, Applicant's exhibits, specifically Exhibits E and F, tend to corroborate and confirm the FBI identification record. And third, the fact that the 2007 and 2012 charges were dismissed does not end the discussion in light of Applicant's denial and explanation of clerical error. Taken together, the facts and circumstances are sufficient to raise a concern under the following disqualifying condition:

AG ¶ 31(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Guideline J also contains conditions that may mitigate the security concern. The most pertinent here is:

AG ¶ 32(c) evidence that the person did not commit the offense.

Applicant presented some evidence that he did not commit the various offenses as listed in the FBI identification record. But that evidence is not strong enough to convince me that he was the victim of clerical error. First, given his explanation, it was incumbent on Applicant to present witnesses and other evidence to rebut and explain the allegations of criminal conduct. He presented little evidence, other than his own statements, to do so. Second, Applicant's documentary exhibits, Exhibits E and F, tend to corroborate and confirm the information in the FBI identification record. Third, one would think that Applicant, as a cleared employee working for a major defense contractor since 2002, would have made a good-faith effort during the past two years to correct his police record. He then could have presented documentary evidence of his good-faith effort in this case. The fact that he has not done so is telling.

In assessing the evidence of the allegations of criminal conduct, I note that everything is possible, just not so probable. First, it is possible that the FBI identification record may contain some incorrect information. But it is not probable that it contains incorrect information for both the 2007 and 2012 matters.

Second, it is possible that Applicant's explanation is true, but it is also possible, if not probable, that Applicant was arrested for the three counts of DUI and other offenses in 2007, he failed to appear in court on those matters, and the matter remained outstanding until it was dismissed in 2012. Because there are two possibilities, and there may be others, it is impossible to be certain, and that uncertainty was Applicant's burden to eliminate. Simply put, too many questions remain unanswered.

Third, based on my opportunity to observe Applicant and listen to him during the hearing, I have concerns about his credibility. The best example of that is under cross-

⁴⁵ Exhibit 4.

examination by Department Counsel, Applicant admitted that he continues to drive with a suspended license, but then changed his statement and said he does not drive.⁴⁶ Accordingly, it follows that I am concerned that Applicant is attempting to bamboozle the Defense Department into continuing his security clearance based on a false narrative. For all these reasons, Applicant's explanation of clerical error is not sufficient to rebut and explain the 2007 and 2012 allegations of criminal conduct. Accordingly, the Guideline J concern is decided against Applicant.

Taken together, Applicant's problematic financial history and the allegations of criminal conduct raise serious 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.⁴⁷ Applicant's favorable evidence is not enough to justify a conclusion that he met his ultimate burden of persuasion to obtain a favorable clearance decision.

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
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f–1.j:	Against Applicant
Paragraph 2, Guideline J:	Against Applicant
Subparagraphs 2.a and 2.b:	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

⁴⁶ Tr. 127–128.

⁴⁷ AG ¶ 2(a)(1)–(9).