



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



In the matter of:)
)
 -----) ISCR Case No. 14-01312
)
 Applicant for Security Clearance)

Appearances

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

10/08/2014

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 39-year-old consultant, 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 October 28, 2013.¹ After reviewing the application and information gathered during a background investigation, the Department of Defense (DOD), on June 10, 2014, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly

¹ Exhibit 1.

consistent with the national interest to grant him access to classified 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 July 10, 2014.

The case was assigned to me August 11, 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 and 2, which were admitted. Applicant presented Exhibit A, a multi-part document, which was admitted. The transcript (Tr.) was received September 4, 2014.

The record was kept open until September 9, 2014, to allow Applicant to present additional documentary matters. They were timely received and are admitted, without objections, as Exhibits B–K.

Findings of Fact

Applicant is a 39-year-old employee who is seeking to retain a security clearance that was granted to him when he was a soldier on active duty in the U.S. Army. He is employed as a consultant for a federal contractor. He has held this job since March 2009, which was shortly after his discharge from the Army. He earns an annual salary of about \$90,000. He has a good record of employment in this job.³ His job duties consist of developing and implementing new scenarios for classroom instruction, writing and finalizing lesson plans, and teaching. In addition, as the site lead for the contract, he is responsible for supervising seven employees. According to his supervisor, Applicant frequently handles classified information and does so “with the utmost care and concern, and he has never violated any policies or procedures regarding the handling of classified information.”⁴

Outside of work, Applicant is involved in a fraternal organization that supports charitable work in the local community.⁵ He is a longtime member of his church and he currently serves in a leadership position.⁶

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 Exhibits F, G, and K.

⁴ Exhibit F.

⁵ Exhibit H.

⁶ Exhibits I and J.

Applicant was on active duty in the Army for nearly six years during 2003–2009, when he was honorably discharged with a non-combat related disability.⁷ After basic training, he was trained in the field of human-intelligence collection. He also attended a military language school where he studied two Middle Eastern languages.⁸ He served a one-year deployment during 2005–2006 in Afghanistan where he worked in intelligence operations and interrogation.⁹ He described one notable achievement that stemmed from a series of interrogations in which he participated.¹⁰

Applicant is the sole breadwinner in his household, which consists of his spouse and five children, ages 12, 10, 8, 3, and 1. The fourth child, a son, was born with a rare medical condition that has required extensive medical care resulting in nearly \$1 million in medical expenses, as estimated by Applicant.¹¹ Because of the child's condition, the state determined in early 2013 that the child was eligible for medical and long-term care through the state's health care cost-containment system.¹² Although the child's medical and long-term care expenses are fully covered, Applicant has experienced financial hardship due to additional costs incurred for his son's medical care (e.g., travel expenses, hotels, etc.).

In addition to his salary, Applicant receives service-connected disability compensation from the Department of Veterans Affairs.¹³ He receives a monthly amount of \$1,934 as of January 2014, or about \$23,208 annually for 2014. Also, he is one of three partners in a newly formed private detective business.¹⁴ He estimates that he will gross about \$10,000 this year, which is firm's first year of doing business.

The SOR alleges and there is substantial evidence to show that Applicant has a history of financial problems or difficulties. The 13 delinquent debts in the SOR total about \$28,500, and they are established by a November 2013 credit report.¹⁵ The debts are grouped together and discussed as follows: (1) five consumer accounts that were placed for collection; (2) two medical collection accounts; (3) a collection account from the Defense Department; and (4) five student loan accounts in collection.

⁷ Exhibits B and C.

⁸ Tr. 60.

⁹ Tr. 52–53.

¹⁰ Tr. 53–54.

¹¹ Tr. 33.

¹² Exhibit A at a.b–1 and a.b–2.

¹³ Exhibits D and E.

¹⁴ Tr. 56–58.

¹⁵ Exhibit 2.

(1) Concerning the five consumer accounts, Applicant disputes one collection account, he settled a collection account for a lesser amount, he entered into a repayment agreement on a collection account, and two collection accounts are unresolved.

He disputes a \$923 collection account, which stems from leased military housing he and his family occupied at his last duty assignment in 2009. He explained the basis for the dispute, the refusal to pay, and presented relevant documentation.¹⁶

He explained that he settled a \$1,128 collection account in June 2014 for about 50¢ on the dollar.¹⁷ He also presented documentary proof of settlement.¹⁸

He explained that he entered into a repayment agreement on a \$1,666 collection account in June 2014.¹⁹ The agreement calls for him to make \$75 monthly payments. He also presented documentary proof of that agreement.²⁰

He explained that he has yet to address the two remaining collection accounts in amounts of \$2,867 and \$3,662.²¹ His intention is to resolve the accounts in the near future by negotiating settlements for lesser amounts.

(2) The two medical collection accounts, in amounts of \$65 and 541, stem from medical expenses incurred for his son's care and treatment.²² Applicant has been instructed by the state that these bills should be paid for by his son's medical coverage and he should continue to submit any such bills to the insurer for payment.

(3) The \$1,858 collection account owed to the Defense Department stems from an overpayment made to Applicant upon his discharge from the Army in 2009.²³ This account appears twice in the November 2013 credit report, as shown by the account

¹⁶ Tr. 31–32, 60–63; Exhibit A at a–1 and a–2.

¹⁷ Tr. 35–36.

¹⁸ Exhibit A at d–1.

¹⁹ Tr. 43–44.

²⁰ Exhibit A at l–1.

²¹ Tr. 36–38.

²² Tr. 32–35; Exhibit A at b.c–1 and b.c–2.

²³ Tr. 44–46, 63–65.

number that contains the same initial five digits.²⁴ He presented documentation from the Defense Department that the account is paid-in-full.²⁵

(4) Applicant disputes his current liability for the five student loan accounts in the total amount of \$15,875. He explained that he obtained the loans to attend college before his military enlistment.²⁶ He explained that upon enlistment he waived eligibility to participate in the Montgomery GI Bill program in exchange for participation in the Army's loan repayment program. It is his understanding that the five student loan accounts now in collection should have been repaid under this program. And he is beginning the process of contacting the Army bureaucracy to resolve this matter. He presented documentary proof of his enlistment, his waiver, and the loan repayment program.²⁷ If his understanding is incorrect, his intention is to repay the debt over time.

At the hearing, Applicant was serious and respectful, he answered questions directly without equivocation, and his presentation was focused and on point. 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.²⁸ 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."²⁹ 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.³⁰ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.³¹

²⁴ Exhibit 2 at 5, 13.

²⁵ Exhibit A at m-1.

²⁶ Tr. 38-43.

²⁷ Exhibit A at g-k.

²⁸ *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).

²⁹ 484 U.S. at 531.

³⁰ Directive, ¶ 3.2.

³¹ Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.³² The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³³ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³⁴ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³⁵

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³⁶ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.³⁷

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.³⁸ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

³² ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³³ Directive, Enclosure 3, ¶ E3.1.14.

³⁴ Directive, Enclosure 3, ¶ E3.1.15.

³⁵ Directive, Enclosure 3, ¶ E3.1.15.

³⁶ *Egan*, 484 U.S. at 531.

³⁷ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

³⁸ Executive Order 10865, § 7.

Discussion

Under Guideline F for financial considerations,³⁹ 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.⁴⁰ 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.⁴¹

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 debts⁴² and a history of not meeting financial obligations⁴³ 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,⁴⁴ and I have especially considered the following as most pertinent:

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances;

³⁹ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

⁴⁰ 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).

⁴¹ AG ¶ 18.

⁴² AG ¶ 19(a).

⁴³ AG ¶ 19(c).

⁴⁴ AG ¶ 20(a)–(f).

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;

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

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The mitigating condition in AG ¶ 20(b) applies because of the serious and rare medical condition of Applicant's three-year-old son. The child's medical and long-term care expenses are fully covered, but Applicant has experienced financial hardship due to additional costs incurred for his son's medical care (e.g., travel expenses, hotels, etc.). Moreover, this does not account for the general hardship such a circumstance imposed upon Applicant and his family. A young child suffering a serious medical condition can be devastating and overwhelming to the parents. While Applicant appears well balanced, I'm sure his son's medical condition consumed large amounts of time and energy and contributed to his inattention to financial matters.

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 take steps to reduce his delinquent debt. He settled one collection account, he has a repayment agreement on another, and he paid a third collection account (SOR ¶¶ 1.d, 1.l, and 1.m). The two medical collection accounts will be resolved in due course based on his son's health care insurance (SOR ¶¶ 1.b and 1.c). The two unresolved collection accounts total less than \$7,000, he intends to resolve them via settlements, and he has sufficient cash flow to do so (SOR ¶¶ 1.e and 1.f). Taken together, these circumstances show a favorable upward trend, and I am persuaded that Applicant will stay the course until his delinquent debt is resolved.

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

The mitigating condition in AG ¶ 20(e) applies to the leased military housing account in collection and the student loan accounts in collection (SOR ¶¶ 1.a and 1.g–1.k). Applicant's explanations set forth a reasonable basis to dispute the legitimacy of the leased military housing account and to dispute his current liability for the student loan accounts. He also provided sufficient documentation to support his explanations and disputes. Moreover, if his understanding of the student loan accounts is incorrect, he intends to repay the loans over time, he has sufficient cash flow to do so, and I am persuaded he will if he does not prevail in the dispute.

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 remaining debt and 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.⁴⁵ In particular, I considered the following matters as significant in my analysis: (1) Applicant's honorable military service, which includes a year-long deployment to a war zone where he performed important service as an interrogator; (2) his record of good employment with his current job; (3) his record of holding a security clearance for the past ten years without reports of a security infraction or violation; (4) his reputation for exercising utmost care while handling classified information in his current job; and (5) his constructive community involvement through membership in a fraternal organization and a leadership position in his church. Taken together, these matters show that Applicant is a reliable, trustworthy, and stable person who can be relied upon to properly handle and safeguard classified information. Accordingly, I conclude that he has 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.

Formal Findings

The formal findings on the SOR allegations are as follows:

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|---------------------------|---------------|
| Paragraph 1, Guideline F: | For Applicant |
| Subparagraphs 1.a–1.m: | 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

⁴⁵ AG ¶ 2(a)(1)–(9).