



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



In the matter of:)
)
 -----) ISCR Case No. 14-02399
)
 Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

03/17/2015

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 56-year-old investigator, he has a history of financial problems or difficulties stemming from a combination of overextending himself and circumstances largely beyond his control. He has initiated a good-faith effort to resolve his financial problems, and he is making adequate forward progress. 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 Questionnaire for National Security Positions (SF86 Format) on May 6, 2013.¹ The application was for a periodic reinvestigation, as the Department of Defense (DOD) had previously granted Applicant

¹ Exhibit 1 (for ease of understanding, it will be referred to as a security clearance application or simply an application).

a top-secret security clearance in April 2009.² After reviewing the application and information gathered during a background investigation, the DOD³ on September 12, 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 eligibility for access to classified information.⁴ 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. He answered the SOR on October 22, 2014.

The case was assigned to me December 15, 2014. The hearing was held as scheduled on January 28, 2015. Department Counsel offered Exhibits 1–5, and they were admitted. Applicant offered Exhibits A–E, and they were admitted. The record was kept open until February 18, 2015, to allow Applicant to submit additional documentary evidence. He made a timely submission, and that matter is admitted without objections as Exhibit F. The hearing transcript (Tr.) was received February 5, 2015.

Findings of Fact

Applicant is a 56-year-old employee who is seeking to retain an existing security clearance. He is employed as an investigator for a federal contractor. He is married and has two teenage children. His wife is an only child and her father is a widower. Applicant's father-in-law has lived with Applicant's family since about 2001.

Applicant's employment history includes a career as a special agent for a federal law enforcement agency.⁵ He retired from that employment in mid-2009. As a retired federal employee, he receives a monthly annuity or retired pay of about \$6,000.⁶ Since retiring from federal service, he has worked as an intelligence analyst for a state or local governmental agency, as an investigator for a federal contractor, and a part-time job which he continues to today as an in-store wine steward.

² Appellate Exhibit I; Tr. 19–24.

³ The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

⁴ 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.

⁵ Tr. 72–75.

⁶ Tr. 51.

The SOR alleges and there is substantial evidence to show that Applicant has a history of financial problems or difficulties.⁷ The debts consist of three charged-off credit card accounts in a total amount of \$85,270 as well as a past-due mortgage loan on a time-share vacation property in foreclosure. At present, the three charged-off accounts are in repayment and the time-share was resolved via a deed in lieu of foreclosure.

Applicant traces his financial problems to two primary factors: (1) out-of-pocket medical expenses incurred for the treatment of a serious illness of his father-in-law; and (2) an unexpected job loss due to a layoff resulting in a loss of expected earned income.⁸ In 2007, his father-in-law was diagnosed and treated for liver cancer, which resulted in approximately \$30,000 of debt charged to credit card accounts.⁹ When Applicant retired in 2009, he obtained a job with a security consulting firm that had a \$5,000 monthly retainer or base with potential for higher income depending on the project.¹⁰ That job disappeared within a month or two when the parent company consolidated operations. His income dropped well below his former federal employment salary, which resulted in using savings to meet monthly obligations. It was not until about October 2011 that Applicant and his wife were able to return to same income level as in mid-2009.

The first charged-off account is for \$34,228 (account number 2259). The balance was more than \$40,000 in July 2010,¹¹ and it has been reduced by regular monthly payments. The current balance, according to a January 2015 credit report, is \$33,328.¹² He estimates a final payoff in November 2020.¹³

The second charged-off account is for \$23,796 (account number 6490). The balance was more than \$28,000 in May 2010,¹⁴ and it has been reduced by regular monthly payments. The current balance per the January 2015 credit report is \$22,696.¹⁵ He estimates a final payoff in November 2020.¹⁶

⁷ Exhibits 2–5.

⁸ Tr. 71.

⁹ Answer to SOR.

¹⁰ Answer to SOR.

¹¹ Exhibit B.

¹² Exhibit 5.

¹³ Exhibit A.

¹⁴ Exhibit C.

¹⁵ Exhibit 5.

¹⁶ Exhibit A.

The third charged-off account is for \$27,246 (account number 2779). The account balance was more than \$36,000 in June 2011,¹⁷ and it has been reduced by regular monthly payments. The current balance per the January 2015 credit report is \$26,146.¹⁸ He estimates a final payoff in November 2020.¹⁹

The fourth delinquent debt is the time-share vacation property. Applicant fell behind on the monthly mortgage loan payment, and the loan was in default by October 2010.²⁰ Applicant was offered and agreed to resolve the delinquency by a deed in lieu of foreclosure. As a result, Applicant received an IRS Form 1099-C, Cancellation of Debt, from the creditor for tax year 2012 in the amount of \$25,875.²¹ The current balance per the January 2015 credit report is \$0.²²

Applicant also disclosed a charged-off credit card account in his wife's name (account number 4009).²³ The balance was more than \$24,000 in March 2010, and it has been reduced by regular monthly payments. The current balance per the January 2015 credit report is \$16,374.²⁴ He estimates a final payoff in November 2020.²⁵ In addition, he repaid six other debts for a total of about \$4,229 during May–December 2014.²⁶ He appears to be using a form of the debt-snowball method as his debt-reduction strategy,²⁷ in which the monthly payment used to pay the repaid debt is then applied toward making an additional, larger payment of the next debt, and so on until all debts are repaid.

¹⁷ Exhibit D.

¹⁸ Exhibit 5.

¹⁹ Exhibit A.

²⁰ Answer to SOR at page 7.

²¹ Exhibit F.

²² Exhibit 5.

²³ Exhibit E.

²⁴ Exhibit 5.

²⁵ Exhibit A.

²⁶ Exhibit A.

²⁷ Tr. 43–44.

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

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

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.

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).

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.

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

The concern is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person 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

³⁸ Executive Order 10865, § 7.

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.

to satisfy debts⁴² and a history of not meeting financial obligations⁴³ within the meaning of Guideline F.

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 problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or death, divorce, or separation), and the [person] acted responsibly under the circumstances;

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 [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The mitigating condition in AG ¶ 20(b) applies because the unexpected medical expenses for Applicant's father-in-law in 2007 and his loss of employment in 2009 were both circumstances largely beyond his control, and he did not act irresponsibly under the circumstances. In addition, the mitigating conditions in AG ¶¶ 20(c) and 20(d) apply because there are clear indications that Applicant's financial problems are being resolved, albeit slowly, and he has initiated a good-faith effort to repay his debts at issue in the SOR.

With that said, I am a little disappointed with Applicant. Given his age and experience as a federal law enforcement officer, he could have done a better job at documenting the efforts he has taken to repay his delinquent debts. And, frankly, the amount of delinquent credit card debt was excessive. Obviously, his financial record is not perfect. But the evidence also supports a conclusion that he has established a meaningful track record of reform and rehabilitation through actual debt reduction. Applicant is a mature man with nearly three decades of service as a federal law enforcement officer, a position that connotes a degree of reliability, trustworthiness, and good judgment. In sum, I am persuaded that Applicant's financial problems are being resolved in due course and that the same or similar problems will not occur again.

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

⁴² AG ¶ 19(a).

⁴³ AG ¶ 19(c).

⁴⁴ AG ¶ 20(a)–(f).

favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.⁴⁵ 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:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a–1.d: For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard
Administrative Judge

⁴⁵ AG ¶ 2(a)(1)–(9).