DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------------------------------	)	ISCR Case No. 14-03531
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gregg Cervi, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2015

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke a security clearance to work in the defense industry. He provided 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 (Standard Form 86) on March 28, 2013.[1] After reviewing the application and information gathered during a background investigation, the DOD, on November 7, 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

[1] Exhibit 1 (this document is commonly known as a security clearance application).

classified information.[2] The SOR is similar to a complaint.[3] It detailed the reasons for the action under the security guideline known as Guideline F for financial considerations. He answered the SOR on December 3, 2014, and requested a decision based on the written record in lieu of a hearing. Thereafter, Department Counsel made a timely request for a hearing.[4]

The case was assigned to me on March 9, 2015. The hearing was held as scheduled on March 24, 2015. Department Counsel offered Exhibits 1, 2, and 3, and they were admitted. Applicant offered Exhibits A, B, and C, and they were admitted. The hearing transcript (Tr.) was received on March 31, 2015.

The record was kept open until April 7, 2015, to provide Applicant an opportunity to submit additional documentation. Those matters were timely submitted and they are admitted, without objections, as Exhibits D and E.

Findings of Fact

Applicant is a 50-year-old aircraft general mechanic for a federal contractor. He is seeking to retain a security clearance previously granted to him. He has worked for his current employer since 2010. He married in 1984 and divorced in 2007. He has an adult son from the marriage. He has not remarried, but he has been living with a woman since 2010, and there no minor children in his household.

Applicant's employment history includes honorable service on active duty in the U.S. Air Force during 1983–2009.[5] He retired as a master sergeant (pay grade E-7). He receives retired pay, but his ex-wife receives approximately 40% of it due to the divorce.[6] During 26 years of service, he deployed overseas on multiple occasions.[7] His military awards include three Meritorious Service Medals, five Air Force Commendation Medals, two Air Force Achievement Medals, nine Air Force Good Conduct Medals, the

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[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] 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] Appellate Exhibit I.

[5] Exhibit D (DD Form 214).

[6] Exhibit B.

[7] Tr. 52–54.

Armed Forces Expeditionary Medal with three service stars, the Southwest Asia Service Medal with two service stars, the Afghanistan Campaign Medal with one service star, the Iraq Campaign Medal with one service star, and the Korean Defense Service Medal.

The SOR alleged four delinquent accounts and a home foreclosure in 2007. Those matters are established by credit reports from 2013 and 2014.[8] One of the delinquent accounts (alleged in SOR ¶ 1.d) is a $10 medical collection account. Applicant explained that it was paid by his health insurance provider, which Department Counsel did not dispute.[9] Accordingly, it will not be discussed further. The three remaining delinquent accounts and the home foreclosure are discussed below.

The first two delinquent accounts are collection accounts for $14,743 and $3,278 (alleged in SOR ¶¶ 1.a and 1.b, respectively) stemming from auto loans. Applicant and his then wife obtained the loans to purchase his and her 2004 Ford Mustangs.[10] Applicant stated that the loans were joint accounts, although a 2013 credit report indicates individual accounts.[11] Both were addressed in the April 2007 divorce, with each spouse receiving a car and the related indebtedness on the promissory note.[12] The car with the promissory note with the largest balance was awarded to his ex-wife. Applicant provided the lender a copy of the divorce decree the following month.

Shortly thereafter, Applicant's ex-wife defaulted on the loan and the car was repossessed. Applicant is unaware of the facts and circumstances surrounding that repossession. He continued to make the required loan payments for his car loan until about August 2007, when the lender split disbursement of his payment to both loans. Applicant called the lender to contest this practice, and was told he could remedy the situation by making the payments for both loans in full, which he could not afford to do. He consulted with his then unit commander and a military legal assistance attorney, and he was advised to surrender the car, which he did in September 2007. The lender then sold the car for a price that he believes was well below market value. He requested documentation of the sale from the lender, which declined to provide any. Subsequently, both loans were sold to the same third-party collection agency in January 2011, which has not been in contact with Applicant. He has not made payment arrangements with the current creditor.

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[8] Exhibits 2 and 3.

[9] Tr. 50.

[10] Exhibit A (account statement for Applicant's auto loan).

[11] Exhibit 2.

[12] Exhibit B.

Like the auto loans, the 2007 home foreclosure is related to the dissolution of Applicant's marriage.[13] According to the 2013 credit report, the loan originated in 2004 with a high credit of $57,950.[14] The house and the related indebtedness on the promissory note were awarded to his ex-wife in the 2007 divorce.[15] His wife defaulted on the mortgage loan sometime thereafter and the house went into foreclosure. Applicant was unaware of the situation until he was contacted in May 2008 by the loan guarantor (it was a VA loan), which offered him assistance. He then contacted the mortgage lender and learned that the foreclosure was concluded. He understands there was not a deficiency balance, the 2013 credit report shows a zero balance, and the account does not appear on the 2014 credit report.

The third delinquent account is a collection account for $2,520 (as alleged in SOR ¶ 1.c), and it is related to the exigencies of Applicant's military service.[16] The account stems from a residential lease entered into by Applicant and a roommate in 2008. About 60 days later, Applicant received military orders to deploy to the Middle East with a departure date in October 2008 and a return date of July 2009.[17] When he signed the lease, he made sure it contained a military clause in case an unexpected departure would cause him to terminate the lease. He removed his property from the residence and contacted the property manager to arrange for an inspection before his departure. The inspection was conducted in early October without incident, and he deployed a few days later on October 8th. The roommate remained in the residence for the balance of the lease as far as he knows.

Applicant was unaware of any indebtedness until going through the current security clearance process.[18] He then contacted the property manager, provided them a copy of his military orders, explained that he complied with the terms of the lease before his departure, and that he was not responsible for any damages or cleaning, because he was not a party to the lease when the roommate vacated the residence.[19] He has not pursued it further, and there has been no collection activity on the account. He submitted a final account statement, dated August 13, 2009, which was sent by the property manager to the roommate as the sole addressee and resident.[20]

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[13] Tr. 41–43.

[14] Exhibit 2.

[15] Exhibit B.

[16] Tr. 34–40.

[17] Exhibit C (military orders).

[18] Tr. 36–38.

[19] Tr. 38.

[20] Exhibit E.

Applicant's overall financial situation is stable. He estimated his 2014 gross income was about $67,000.[21] He stated he has a positive net remainder of about $1,000 monthly; he has about $17,000 in a savings account; he has about $3,500 in a checking account; and he is able to meet all of his regular, recurring expenses and debts.[22]

Law and Policies

It is well-established law that no one has a right to a security clearance.[23] 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."[24] 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.[25] An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.[26]

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.[27] The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.[28] An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.[29] In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.[30]

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[21] Tr. 45.

[22] Tr. 44–45.

[23] *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).

[24] 484 U.S. at 531.

[25] Directive, ¶ 3.2.

[26] Directive, ¶ 3.2.

[27] ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

[28] Directive, Enclosure 3, ¶ E3.1.14.

[29] Directive, Enclosure 3, ¶ E3.1.15.

[30] Directive, Enclosure 3, ¶ E3.1.15.

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.[31] The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.[32]

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.[33] 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,[34] 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.[35] 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.[36]

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

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[31] *Egan*, 484 U.S. at 531.

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

[33] Executive Order 10865, § 7.

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

[35] 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).

[36] AG ¶ 18.

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 to satisfy debts[37] and a history of not meeting financial obligations[38] within the meaning of Guideline F.

In mitigation, I have considered six mitigating conditions under Guideline F,[39] 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;
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> AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
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> AG ¶ 20(e) the [person] 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.

To start, Applicant's history of financial problems or difficulties goes back several years to the 2007–2008 period. All the debts in the SOR were incurred years ago.

The mitigating condition in AG ¶ 20(b) applies to all the delinquent accounts except for the medical collection account, which was paid, and so, AG ¶ 20(d) applies to it. The two collection accounts stemming from the car loans were the result of fallout from Applicant's divorce, a circumstance largely beyond his control. The same goes for the 2007 home foreclosure. The mitigating condition also applies to the collection account stemming from the residential lease, as his military deployment was a circumstance wholly outside of his control. Moreover, based on the evidence before me, Applicant did not act irresponsibly under the circumstances for any of those accounts.

The mitigating condition in AG ¶ 20(e) applies to the collection account stemming from the car loan for his ex-wife's car, the home foreclosure, and the collection account stemming from the residential lease. Applicant has a reasonable basis to dispute the legitimacy of the collection account for the car loan and the home foreclosure. Both

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[37] AG ¶ 19(a).

[38] AG ¶ 19(c).

[39] AG ¶ 20(a)–(f).

debts and the associated property were awarded to his ex-wife in the 2007 divorce, and he provided supporting documentation as shown by the divorce decree.[40] He also has a reasonable basis to dispute the legitimacy of the collection account for the residential lease, and he provided supporting documentation as shown by the final account statement.[41]

Applicant met his burden to present sufficient evidence to rebut, explain, and mitigate the financial considerations security concern. I have no doubts about his reliability, trustworthiness, and good judgment. 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.[42] In doing so, I gave Applicant substantial credit for his 26 years of honorable military service, which concluded with his retirement as a senior noncommissioned officer. 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.e:	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. Eligibility is granted.

Michael H. Leonard
Administrative Judge

[40] Exhibit B.

[41] Exhibit E.

[42] AG ¶ 2(a)(1)–(9).