



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



In the matter of:)
)
-----) ISCR Case No. 14-03991
)
Applicant for Security Clearance)

Appearances

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

04/29/2015

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke his security clearance to work in the defense industry. A 42-year-old linguist, he has a history of financial problems or difficulties stemming from a combination of circumstances largely beyond his control. He initiated a good-faith effort to resolve some matters, but he has largely ignored two collection accounts totaling more than \$28,000, and he has no plans to address those debts. He did not meet his burden to present sufficient evidence to explain and mitigate the financial considerations security concern. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF86 Format) on February 19, 2013.¹ After reviewing the application and

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

information gathered during a background investigation, the DOD,² on October 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 eligibility for access to classified information.³ 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 31, 2014, and he requested a hearing.

The case was assigned to me on 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–I, and they were admitted. The hearing transcript (Tr.) was received on February 5, 2015.

Findings of Fact

Applicant is a 42-year-old linguist who is proficient in Farsi and Pashto. A defense contractor has offered him a job as a linguist, which is contingent upon a favorable outcome of this case.⁴ He previously worked as a linguist for the same defense contractor during 2013, when he deployed in support of the U.S. military in Afghanistan. He married in 2000, separated in 2010, and divorced in 2013. He has no children. He is currently living with his parents.

Applicant's employment history over the last decade or so includes a lengthy period of self-employment and two periods of unemployment.⁵ He owned and operated an auto-glass business from January 2001 to December 2011. Upon closing the business, he was then unemployed from January 2012 to July 2012. He worked briefly for a car dealership from August 2012 to November 2012. He was unemployed from December 2012 to February 2013. He worked as a linguist from February 2013 to about August 2013. Since then, he has been working for a real estate broker.

The SOR alleges and there is substantial evidence to show that Applicant has a history of financial problems or difficulties consisting of two unpaid collection accounts for \$11,259 and \$17,068. Those debts are established by credit reports from February

² 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.

³ 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.

⁴ Appellate Exhibit I; Tr. 6–10.

⁵ Exhibit 1.

2013 and July 2014, but they do not appear in a December 2014 credit report presented by Department Counsel.⁶ Likewise, Applicant presented credit reports from October 2014 in which the two collection accounts do not appear.⁷ At present, the two collection accounts are not paid, settled, in a repayment agreement, disputed, cancelled, forgiven, or otherwise resolved. Other than the credit reports, Applicant did not present any documentation for the two collection accounts.

Applicant denied the SOR allegations concerning the two collection accounts, and he provided the following explanation:

Both items [the two collection accounts] are more than 7 years old and have been wiped clean from my credit reports. An explanation for the reasons I was in that situation is because I was a small business owner or self-employed from 2000 til 2011. In 2008 I owned two homes, I was a private investor in my ex-wife's real estate business, and I was running my own business around that year I got hit hard by the economy really bad. My wife's business was shut down and I was left with one income. My own business was also failing because of the economy and several changes that happened to the industry. Top it all of my wife at that time, now my ex-wife, was diagnosed with breast cancer and so now we were in the process of losing our new house we were living in. So I was left with the option of putting a roof and putting food on the table. I had to decide what was more important than the other, but ever since I have worked on settling all my debts, cleared some liens that I had with the IRS, and now have a good credit.⁸

At the hearing, Applicant confirmed the above explanation.⁹ He further stated that he has no intention of repaying the two collection accounts because they have fallen off his credit report and they are beyond the relevant statute of limitations.¹⁰ Also at the hearing, Applicant stated that his overall financial situation has stabilized, he has about \$6,000 in a savings account, and he has about \$8,000 in a brokerage account.¹¹

In addition to the October 2014 credit reports, Applicant presented documentary information showing that he resolved other debts. In January 2013, he resolved a

⁶ Exhibits 2–5.

⁷ Exhibits A, B, and C.

⁸ Answer to SOR.

⁹ Tr. 39–41.

¹⁰ Tr. 46–47, 53.

¹¹ Tr. 43–46.

federal tax lien for nearly \$30,000 in back taxes for tax years 2005, 2006, and 2007.¹² In March 2013, he paid \$315 and \$548 to settle two collection accounts.¹³ In April–May 2012, he paid \$1,500 to settle and satisfy an unpaid judgment taken against him in 2008.¹⁴

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁵ 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.”¹⁶ 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.¹⁷ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁸

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁰ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²¹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²²

¹² Exhibits D and E.

¹³ Exhibits F and G.

¹⁴ Exhibits H and I.

¹⁵ *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).

¹⁶ 484 U.S. at 531.

¹⁷ Directive, ¶ 3.2.

¹⁸ Directive, ¶ 3.2.

¹⁹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁰ Directive, Enclosure 3, ¶ E3.1.14.

²¹ Directive, Enclosure 3, ¶ E3.1.15.

²² 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.²³ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁴

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.²⁵ 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,²⁶ 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.²⁷ 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.²⁸

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

²³ *Egan*, 484 U.S. at 531.

²⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁵ Executive Order 10865, § 7.

²⁶ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²⁷ 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).

²⁸ 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 debts²⁹ and a history of not meeting financial obligations³⁰ within the meaning of Guideline F.

In mitigation, I have considered six mitigating conditions under Guideline F,³¹ 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.

It is apparent that Applicant has a history of financial problems or difficulties stemming from a combination of circumstances largely beyond his control. Those circumstances were the failure of his then wife's business, the failure of his own business, his two periods of unemployment, and the marital difficulties that resulted in separation in 2010 and divorce in 2013. He acted responsibly under the circumstances by continuing to work and earn a living, by resolving a substantial federal tax lien, by settling two collection accounts, and by settling an unpaid judgment.

Nevertheless, Applicant has largely ignored two collection accounts totaling more than \$28,000, and he has no plans to resolve those debts. He does not dispute that he incurred the debts, but he relies on the fact that the debts have fallen or aged off the most recent credit reports and are uncollectible under the relevant statute of limitations. Neither circumstance amounts to responsible conduct nor a good-faith effort when evaluating a person's fitness or suitability for access to classified information under Guideline F. Instead, the two collection accounts remain unresolved, and Applicant does not intend to take action to resolve them.

²⁹ AG ¶ 19(a).

³⁰ AG ¶ 19(c).

³¹ AG ¶ 20(a)–(f).

Given those circumstances, Applicant's history of financial problems creates 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.³² Accordingly, I conclude that he did not meet 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:	Against Applicant
Subparagraphs 1.a–1.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 access to classified information. Eligibility is denied.

Michael H. Leonard
Administrative Judge

³² AG ¶ 2(a)(1)–(9).