



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-10587
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro Se*

November 25, 2008

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on March 3, 2008. The SOR is equivalent to an administrative complaint and it details the factual basis for the action. The issues in this case fall under Guideline F for financial considerations and Guideline E for personal conduct. For the reasons discussed below, this case is decided against Applicant.

In addition to the Executive Order and Directive, this case is brought under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines) approved by the President on December 29, 2005.

¹ Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended, and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive).

The Revised Guidelines were then modified by the Defense Department, effective September 1, 2006. They supersede or replace the guidelines published in Enclosure 2 to the Directive. They apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter.² The Directive is pending revision or amendment. The Revised Guidelines apply here because the SOR is dated after the effective date.

Applicant's response to the SOR was received by DOHA on July 7, 2008, and he requested a hearing. The case was assigned to me on August 22, 2008. The hearing took place as scheduled on September 24, 2008. The transcript (Tr.) was received on October 2, 2008.

Findings of Fact

Under Guideline F, the SOR alleges 27 delinquent debts ranging from \$26 to \$12,490 for a total of about \$43,000; it also alleges a single incident of theft by check for less than \$500, to which Applicant pleaded guilty. Under Guideline E, the SOR alleges that Applicant gave false answers in response to two questions about his financial record when he completed a security-clearance application. In his response to the SOR, Applicant admitted the Guideline F allegations except for three debts and he denied the falsification allegations. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 36-year-old security officer who works as night-shift supervisor. He has worked for his current employer since July 2006. His employment history includes military service in the U.S. Marine Corps that ended with his honorable discharge.

His first marriage ended in divorce. He has a son from that marriage and he is required to pay child support. He remarried in 2001, but he and his second wife have been separated for about the last four years. He has a second son with a woman with whom he resides.

Applicant has a history of financial problems. The delinquent debts alleged in the SOR are established by Applicant's admissions and the admitted evidence (Exhibits 2, 3, 4, and 5). To date, Applicant has not paid, settled, or otherwise resolved any of these debts. His general plan to address these debts is that now that his child-support arrearage has been caught up, he plans to use that money to pay on the debts.

He currently earns about \$16 per hour. He has no savings, no investment accounts, and does not own any real estate. He describes his current financial condition as living paycheck-to-paycheck. For example, he was behind on his cell phone bill at the

² See Memorandum from the Under Secretary of Defense for Intelligence, dated August 30, 2006, Subject: Implementation of Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 29, 2005).

hearing. He explained the indebtedness was the result of not having enough money to pay his expenses (Tr. 28).

Applicant is seeking to obtain an industrial security clearance for the first time. He completed a security-clearance application on or about August 22, 2006 (Exhibit 1). He was required to answer various questions about his background, to include his financial record. He denied having been over 180 days delinquent on any debts during the last seven years in response to Question 28a. Likewise, he denied that he was currently over 90 days delinquent on any debts in response to Question 28b. During his background investigation, Applicant acknowledged his delinquent accounts and explained that he did not report the accounts on his security-clearance application because he was not aware of the accounts (Exhibit 2). He denied any intention to falsify any information. He provided a similar explanation during the hearing (Tr. 41).

Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, no one has a right to a security clearance.³ As noted by the Supreme Court in 1988 in the case of *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁴ A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁵ An unfavorable decision: (1) denies any application; (2) revokes any existing security clearance; and (3) prevents access to classified information at any level and retention of any existing security clearance.⁶ 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.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁷ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

³ *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) (“It is likewise plain that there is no ‘right’ to a security clearance, so that full-scale due process standards do not apply to cases such as Duane’s.”).

⁴ *Egan*, 484 U.S. at 531.

⁵ Directive, ¶ 3.2.

⁶ Directive, ¶ 3.2.

⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁸ Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁰ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹¹ The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹²

The Revised Guidelines set forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept. A person granted access to classified information enters into a special relationship with the government. 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.¹³ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting eligibility for a security clearance.

Analysis

Under Guideline F for financial considerations,¹⁴ a security concern typically exists due to significant unpaid debts. "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."¹⁵ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

The record evidence supports a conclusion that Applicant has a history of financial problems. His history of financial problems is a security concern because it

⁹ Directive, Enclosure 3, ¶ E3.1.15.

¹⁰ Directive, Enclosure 3, ¶ E3.1.15.

¹¹ *Egan*, 484 U.S. at 531.

¹² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹³ Executive Order 10865, § 7.

¹⁴ Revised Guidelines at 13–14 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁵ Revised Guidelines at 13.

indicates inability or unwillingness to satisfy debts¹⁶ and a history of not meeting financial obligations¹⁷ within the meaning of Guideline F. The record evidence is more than sufficient to establish these two disqualifying conditions.¹⁸ Likewise, the evidence is sufficient to establish financial irresponsibility.

The guideline also provides that certain conditions may mitigate security concerns:

MC 1—the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

MC 2—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;

MC 3—the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

MC 4—the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

MC 5—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; or

MC 6—the affluence resulted from a legal source of income.

All the mitigating conditions have been considered and none apply in Applicant's favor. Applicant did not present sufficient evidence to justify applying any MC. In reaching this conclusion, I specifically considered the circumstances of his past divorce and his current separation. But Applicant did not present sufficient evidence to show that he acted responsibly under the circumstances. It appears that Applicant's history of financial problems is largely due to using credit to live beyond his means.

¹⁶ DC 1 is "inability or unwillingness to satisfy debts."

¹⁷ DC 3 is "a history of not meeting financial obligations."

¹⁸ But in this particular case, the single incident of theft by check in 2001 is not sufficient to raise a security concern as a deceptive or illegal financial practice. Accordingly, SOR ¶ 1.bb is decided for Applicant.

Personal conduct under Guideline E¹⁹ includes issues of false statements and credible adverse information that may not be enough to support action under any other guideline. In particular, a security concern may arise due to:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations [that may] raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.²⁰

A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

The issue here is the truthfulness of Applicant's answers to Questions 28a and 28b of his security-clearance application. In making this determination, I note that I had the opportunity to listen to his testimony and observe his demeanor. Applicant's explanation that he was unaware of the accounts is credible, as it appears that the delinquent accounts were largely out-of-sight and out-of-mind. I am not persuaded that Applicant gave deliberately false answers in response to these two questions. Accordingly, Guideline E is decided for Applicant.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the security concerns under Guideline F. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole-person concept²¹ was given due consideration and that analysis does not support a favorable decision. Indeed, looking forward to the next 12 to 18 months, it is highly unlikely that he will successfully resolve his financial problems.²² This case is decided against Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

¹⁹ Revised Guidelines at 10–12 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁰ Revised Guidelines at 10.

²¹ Revised Guidelines at 1–2 (listing nine factors to consider under the whole-person concept).

²² Revised Guidelines at 2 ("the likelihood of continuation or recurrence").

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.aa:	Against Applicant
Subparagraph 1.bb:	For Applicant

Paragraph 1, Guideline E:	For Applicant
Subparagraphs 1.a–1.b:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge