



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-15235
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

July 3, 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 December 17, 2007. 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 based on a history of financial problems. 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. The Revised Guidelines were then modified by the Defense Department, effective

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).

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 on January 10, 2008, and he requested a hearing. The case was assigned to me on March 28, 2008. The hearing took place as scheduled on May 16, 2008. The transcript (Tr.) was received on June 2, 2008.

Findings of Fact

Under Guideline F, the SOR alleges 27 delinquent debts (§ 1.a–§ 1.l) ranging from \$74 to \$12,151 for about \$66,000 in total. The delinquent debts include collection accounts and charged-off accounts. He admitted 21 of 27 debts. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 39-year-old employee of a federal contractor. He has worked as a network engineer for his current employer since about January 2005. He held a security clearance when he was on active military duty, and he now is seeking to obtain an industrial security clearance for the first time. To that end, he completed a security-clearance application in December 2005 (Exhibit 1). In response to questions about his financial record, he disclosed a repossession, an unpaid judgment, and numerous delinquent accounts.

His annual salary is about \$49,000. He has married and divorced twice. His most recent marriage took place in 1993 and ended in divorce in about August 2001. Applicant attributes some of his financial problems to this divorce, as he agreed to take on the marital debts.

In 1987, Applicant enlisted in the Army after completing his high-school education. He intended to serve to obtain educational benefits, but he enjoyed it and decided to make it a career. He worked as an automated logistical specialist. He served 12 years and 11 months before he retired in June 2000 due to disability.

His disability arose from a traffic accident in July 1998 that resulted in a head injury. Initially, he was in a coma and was thereafter hospitalized for several months. Indeed, from July 1998 to his retirement in June 2000, he was either hospitalized or convalescing at home, all the while receiving full pay and benefits at his paygrade of E-6. His disability was initially categorized as temporary, but he was not allowed to return

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).

to active duty. He suffers from a lack of balance or stability (“But if I stand up and you were to push me, I’ll fall down”) (Tr. 55).

The VA has rated Applicant 60% disabled and he now receives \$324 monthly. In addition, he received a lump-sum payment of about \$45,000 in about January 2003 (Tr. 58). He was able to account for that money in only very general terms (Tr. 58–60).

Applicant experienced underemployment and unemployment after his disability retirement. He worked several different jobs without satisfaction and had a six-month period of unemployment in 2002. In September 2002, he returned to school (he had previously earned an associate’s degree) at a state university. He earned a B.B.A. in information systems in December 2004, and he started his current job the following month. He loves his current job and desires to continue working there for the foreseeable future.

Applicant’s two minor daughters have lived with him from time-to-time during the last few years (Tr. 48–52). This circumstance resulted in additional living expenses. Currently, his youngest daughter is living with him.

Applicant’s history of financial problems is well documented (Exhibits 1–6). The delinquent debts in the SOR are established by Applicant’s admissions and the admitted documentary evidence. He has not paid in full, settled, or resolved any of the debts in the SOR. He established a debt snowball payoff plan for 26 accounts (Exhibit 2). But he has been unable to take action via the plan due to his regular monthly expenses (Tr. 54, 60).

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

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.

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 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.

⁶ Directive, ¶ 3.2.

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

⁸ Directive, Enclosure 3, ¶ E3.1.14.

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.

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 indicates inability (not 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.

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;

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

¹⁵ Revised Guidelines at p. 13.

¹⁶ DC 1 is “inability or unwillingness to satisfy debts.”

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

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; and,

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

The most pertinent is MC 2; the others do not apply based on the facts and circumstances of this case.

MC 2—conditions largely beyond a person's control—applies in Applicant's favor. It appears Applicant was a financially responsible person serving as a noncommissioned officer in the Army in 1998 when he was in a traffic accident resulting in a serious head injury. As a result, he was unable to continue with his military career, which ended with a disability retirement in 2000. A divorce from his second wife followed shortly thereafter in 2001. His post-Army employment history also contributed to his financial problems, as he experienced both underemployment and unemployment. Taken together, these circumstances were largely beyond his control. He has acted responsibly under the circumstances by seeking work and additional education. His decision to further his education was wise, but it limited his ability to address his indebtedness. Nevertheless, returning to school to improve one's job skills and employability is rarely an irresponsible decision.

Another potential mitigating condition is MC 4, which requires a person to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts. He has taken a few positive steps to resolve his financial problems as evidenced by establishing the snowball debt repayment plan. But his efforts, in light of the extent of ongoing financial problems, are not enough to qualify as a good-faith effort. Indeed, Applicant acknowledged that he has been unable to act upon his plan, which suggests that it is not a realistic and workable plan.

This case presents both unfavorable and favorable evidence, which requires thoughtful balancing in light of the clearly-consistent standard. I have considered the totality of facts and circumstances and conclude the favorable evidence is not persuasive. Applicant is facing a mountain of delinquent debt and he has not made any measurable improvement to his situation. Although he has experienced difficult circumstances, starting with the traffic accident in 1998, some forward progress on resolving his indebtedness is necessary to obtain a favorable decision.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the security concerns. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole-person concept was given due consideration and that analysis does not support a favorable decision. 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:

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

Conclusion

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

Michael H. Leonard
Administrative Judge