



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



In the matter of:)
)
-----) ISCR Case No. 08-06501
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel

For Applicant: *Pro Se*

August 17, 2009

Decision

LEONARD, Michael H., Administrative Judge:

This is a security clearance case in which Applicant contests the Defense Department’s intent to deny his eligibility for an industrial security clearance. The action is based on (1) a history of financial problems, to include child-support arrears, a delinquent governmental debt, and bad checks, and (2) the falsification of a January 2008 security-clearance application, when Applicant denied Question 28a about having been more than 180 days delinquent on any debts in the last seven years. The record contains insufficient evidence to explain, extenuate, or mitigate the security concerns stemming from his history of financial problems, which are ongoing and unresolved for the most part. And the record contains insufficient evidence to prove that his answer to Question 28a was deliberately false; his answer was negligently or recklessly incorrect, but it was not knowingly and willfully false. Accordingly, as explained in detail below, this case is decided against Applicant.

Statement of the Case

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 18, 2008. The SOR is equivalent to a complaint and it details the factual basis for the action. The SOR alleged security concerns under Guideline F for financial considerations and Guideline E for personal conduct, and it recommended submitting Applicant's case to an administrative judge for a determination to deny or revoke a security clearance.

Applicant answered the SOR on or about February 2, 2009, and he requested a hearing. The case was reassigned to me on May 4, 2009. The hearing took place as scheduled on June 16, 2009. The government presented documentary exhibits (Exhibits 1–5) and called no witnesses. Applicant presented documentary exhibits (Exhibits A–F), called no witnesses, and testified on his own behalf. The transcript (Tr.) was received on June 24, 2009.

Findings of Fact

Applicant admitted all allegations under Guideline F. He denied the falsification allegation under Guideline E, contending that his answer was mistaken, but he did not intend to give a false answer to the question. His admissions are incorporated herein as findings of fact. Based on the record as a whole, the following facts are established by substantial evidence.

Applicant is a 37-year-old aircraft mechanic who works on the B-1 bomber. He served on active duty in the U.S. Air Force from 1993 to 2004. Since his discharge, he has worked a series of jobs as an aircraft mechanic. He has been continuously employed for many years except for about a two-month period in 2005 (Tr. 43–44). He held a security clearance while serving in the Air Force, and he is seeking to obtain an industrial security clearance for the first time.

He completed a security-clearance application in January 2008 (Exhibit 1). It required Applicant to disclose information about his background, to include his financial record. In response to Question 28a, he answered in the negative thereby denying that he had been more than 180 days delinquent on any debts in the last seven years. In response to both multi-part questions about finances (Questions 27 and 28), he answered all questions in the negative except for a question about repossession of

¹ This case is adjudicated under 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). In addition, because the SOR was issued after September 1, 2006, the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines) approved by the President on December 29, 2005, then modified by the Defense Department, and made effective September 1, 2006, apply to this case. They supersede or replace the guidelines published in Enclosure 2 to the Directive.

property, to which he disclosed a car repossession in 2004. He also disclosed the bad checks in response to a question about his police record.

Two credit reports from 2008 establish that Applicant has a history of financial problems (Exhibits 4 and 5). His financial problems include child-support arrears, a delinquent governmental debt, bad checks, a deficiency balance stemming from the repossessed car, and other delinquent debts.

The child-support arrears (alleged SOR ¶ 1.a) are based on a court order to pay child support for his three minor sons. In February 2008, the arrearage was about \$7,171, and it was reduced to about \$6,316 by November 2008 (Exhibits 4 and 5). In March 2009, child-support enforcement issued an income-withholding order or wage garnishment to Applicant's employer (Exhibits B and C). It requires withholding of \$610 monthly, which includes \$125 monthly for child-support arrears greater than 12 weeks. In May 2009, Applicant's federal income tax refund of \$2,114 was intercepted and applied to the child-support arrears (Exhibit A). Applicant estimates the current arrearage is about \$3,900 (Tr. 35–36).

The delinquent governmental debt (alleged in SOR ¶ 1.b) is for repayment of a reenlistment bonus Applicant received from the Air Force. The government is seeking repayment of the bonus because Applicant did not satisfy the terms of his reenlistment contract when he was discharged. In February 2008, the balance was about \$11,207, and it was reduced to about \$9,295 by November 2008 (Exhibits 4 and 5). It has been reduced by interception of his federal income tax refunds; otherwise, he has made no payments on this debt (Tr. 47–48).

Applicant wrote multiple bad checks (alleged in SOR ¶¶ 1.h, 1.i, and 1.k), and some of those checks led to criminal prosecution. He estimates the total of bad checks was about \$3,400 (Tr. 30). The documentary evidence shows that he wrote about 29 bad checks (mostly for small amounts to fast-food businesses and other vendors) for a total of about \$2,800 that were resolved by payment and pleading guilty to a misdemeanor (Exhibit 2). He had no information about the three bad checks placed for collection for \$65, \$63, and \$75 (alleged in SOR ¶¶ 1.h and 1.i), and which appear in his February 2008 credit report (Tr. 55–57; Exhibit 5).

The remaining delinquent debts (alleged in SOR ¶¶ 1.c, 1.d, 1.e, 1.f, 1.g, and 1.j) total about \$10,946. All these debts are unpaid, Applicant has no repayment agreements or plans in place, and he has not made any type of regular payment on them (Tr. 73–74).

Applicant attributes his financial problems to a combination of: (1) his discharge from the Air Force in 2004 that resulted in a decline in income; (2) a divorce in 2003; and (3) an apathetic attitude—"I just didn't care about anything"—after the divorce (Tr. 30). It took Applicant a couple of years to get his life together, and he has done so by moving back to the state where his sons live and reestablishing a relationship with them. To that end, he spent a large amount of money on his sons to make up for the

past. Also, he gives his ex-wife \$200 monthly for child support, which is in addition to the monies withheld from his pay for child support. He loves his current job, and it is the first job in the last four years that he has been paid well enough to attempt to address his delinquent debts (Tr. 32, 35).

He estimates that his gross income for 2009 will be about \$50,000 to \$55,000 (Tr. 35). He has about \$500 in cash reserves, about \$370 in a bank account, and no other financial accounts (Tr. 68–69). He is current with his car payment of \$245 per month (Tr. 71). No one is actively attempting to collect a debt from him, and no one is suing him for collection of a debt (Tr. 71–72). He is not under court-ordered supervision or probation as a result of the bad checks conviction (Tr. 73).

Consistent with how he answered the SOR, Applicant explained that he answered Question 28a in the negative because he really did not know who he owed due to his past apathy (Tr. 32–33). Under cross-examination, he admitted that he knew he was 180 days past due on bills, he admitted that he knew he owed some creditor for a 180-day past-due account, and he could not explain why he did not answer Question 28a in the affirmative and simply state on the security-clearance application that he could not provide the details about the debts (Tr. 65–66).

Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, the only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information.

It is well-established law that no one has a right to a security clearance.² As noted by the Supreme Court 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.”³ 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.⁴ An

² *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.”).

³ 484 U.S. at 531.

⁴ Directive, ¶ 3.2.

unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁶ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁰ The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹¹

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.¹² 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.

⁵ Directive, ¶ 3.2.

⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁷ Directive, Enclosure 3, ¶ E3.1.14.

⁸ Directive, Enclosure 3, ¶ E3.1.15.

⁹ Directive, Enclosure 3, ¶ E3.1.15.

¹⁰ *Egan*, 484 U.S. at 531.

¹¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹² Executive Order 10865, § 7.

Analysis

1. The record contains insufficient evidence to prove that his answer to Question 28a was deliberately false.

Personal conduct under Guideline E¹³ includes issues of false statements and credible adverse information that may not be enough to support action under any other guideline. In particular, security concerns 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.¹⁴

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 answer to Question 28a of his security-clearance application. He denied having any delinquent accounts (180 days past due and currently 90 days past due) in response to both Questions 28a and 28b. But he disclosed a car repossession and the bad checks in response to other questions on the application. He admitted that he knew he was 180 days past due with some creditor when he answered Question 28a. In addition, his background as an Air Force veteran and prior clearance holder is part of the analysis. In that regard, Applicant likely knew that a credit check was part of a background investigation.

Based on the record, I am not persuaded that Applicant was lying when he answered Question 28a. First, his explanation that he did not know with certainty whom his creditors were is credible, because his finances were in disarray due to his neglect. Second, he likely knew that a credit check was part of his background investigation, which militates against a deliberate effort to hide or conceal the information. Third, he disclosed other derogatory information (the repossession and bad checks) about his finances. His disclosures also militate against the case that he was deliberately omitting, concealing, or falsifying information when he answered Question 28a. Taken together, these reasons support a conclusion that Applicant's answer to Question 28a was negligently or recklessly incorrect; however, his answer was not knowingly and willfully false. Accordingly, Guideline E is decided for Applicant.

¹³ Revised Guidelines at pp. 10–12 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁴ Revised Guidelines at p. 10.

2. The record contains insufficient evidence to explain, extenuate, or mitigate Applicant's history of financial problems.

Under Guideline F for financial considerations,¹⁵ 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."¹⁶ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

Applicant's history of financial problems raises security concerns because it indicates inability or unwillingness to satisfy debts¹⁷ and a history of not meeting financial obligations¹⁸ within the meaning of Guideline F. The record shows Applicant has child-support arrears and a delinquent governmental debt, both of which are ongoing and unresolved. He wrote numerous bad checks resulting in a misdemeanor conviction. He has several other delinquent debts, to include a deficiency balance from the car repossession, totaling nearly \$11,000. And he has taken virtually no action on those debts. These facts and circumstances are more than sufficient to establish these two disqualifying conditions as well as a pattern of financial irresponsibility. In addition, the bad checks conviction qualifies as a deceptive or illegal financial practice within the meaning of the guideline.¹⁹

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

¹⁵ Revised Guidelines at pp. 13–14 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁶ Revised Guidelines at p. 13.

¹⁷ DC 1 is "inability or unwillingness to satisfy debts."

¹⁸ DC 3 is "a history of not meeting financial obligations."

¹⁹ DC 4 is "deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust."

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 of the mitigating conditions have been considered and none apply in Applicant's favor. Although Applicant experienced financial difficulties after his divorce and discharge from the Air Force, MC 2 does not apply because he did not act responsibly under the circumstances. It appears he simply gave up—he did not care—making a bad situation worse. Applicant paid the bad checks, along with extra fees, to resolve the criminal prosecution. Otherwise, there is little evidence of voluntary payments. The child-support arrears and the governmental debt have been paid down by intercepting his federal income tax refund. Given these circumstances, credit in mitigation under MC 4 for good-faith efforts is not justified.

His financial problems are not minor, and his financial problems are current and ongoing. His generosity to his sons is understandable and commendable, but it has not improved his overall record of financial responsibility. And the lack of a realistic plan to address the other delinquents debts does not speak well for Applicant. Given these circumstances, it is too soon to tell if Applicant will resolve his outstanding delinquent debts in a reasonable time and then continue to be a financially responsible person. At this time, the likelihood of additional or continuing financial problems cannot be ruled out. Accordingly, Guideline F is decided against Applicant.

3. *The whole-person concept does not support a favorable decision.*

I also considered this case in light of the whole-person concept, which requires an administrative judge to evaluate a person's eligibility by considering the totality of the person's conduct and all the circumstances. An administrative judge should consider the nine factors listed in the Revised Guidelines as follows:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.²⁰

Applicant is an experienced and mature individual who should be able to handle his financial obligations without the difficulties he has experienced. At this time, he has a good job and earns a decent salary. He has good intentions and wants to resolve his indebtedness. These circumstances weigh in his favor.

Applicant also has a good employment record. Indeed, three individuals submitted letters vouching for Applicant as a dependable, reliable, and hard-working employee who is trustworthy (Exhibits D, E, and F). But a good employment record, by itself, is not sufficient to mitigate the concerns.

Clearly, he now has a changed attitude and that is for the good. But he is yet to clean up the mess he made of his finances. The two credit reports from 2008 establish a highly derogatory credit history, which is ongoing. Both his child-support arrears and the delinquent governmental debt are viewed with disfavor given the nature of the obligations. He presented no paperwork on the other delinquent debts totaling nearly \$11,000. This is consistent with his testimony that he has done little to address those debts. Given these circumstances, I am unable to predict if he is likely to favorably resolve his outstanding delinquent debts in the foreseeable future. Likewise, I am not persuaded that his history of financial problems is a thing of the past and will not be an item of concern in the future. Without a well-established track record of financial responsibility, the clearly-consistent standard requires an unfavorable decision.

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. This case is decided against Applicant.

Formal Findings

The formal findings on the SOR allegations, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:
Subparagraphs 1.a–1.k:

Against Applicant
Against Applicant

²⁰ Revised Guidelines at pp. 1–2.

Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant
Subparagraph 2.b: ²¹	For Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge

²¹ This allegation, which merely cross-referenced the bad checks prosecution in SOR ¶ 1.k, was adequately covered under Guideline F, and it has no independent security significance under Guideline E. Accordingly, it is decided for Applicant.