



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



In the matter of:)
)
-----) ISCR Case No. 08-06758
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel

For Applicant: *Pro Se*

November 30, 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 a security clearance to work in the defense industry. The record shows Applicant has a history of financial problems or difficulties as shown by 12 delinquent debts ranging in amounts from \$112 to \$13,673 for an approximate total of \$26,000. He had two periods of unemployment in 2005 and 2006–2007. Eight of the 12 debts are now paid or settled. The four remaining debts amount to about \$2,200, and Applicant has the ability to repay or resolve these debts in the near future. The record contains sufficient evidence to explain, extenuate, or mitigate the security concerns. Accordingly, as explained below, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) to Applicant on February 17, 2009. The SOR is similar to a complaint as it detailed the factual basis for the action under Guideline F for financial considerations. Also, the SOR recommended submitting the case to an administrative judge for a determination to deny or revoke Applicant's security clearance.

Applicant answered the SOR in a timely fashion, and he requested a decision without a hearing. Accordingly, the case will be decided on the written record.²

On August 7, 2009, the government submitted its written case consisting of all relevant and material information that could be adduced at a hearing.³ This so-called file of relevant material (FORM) was mailed to Applicant and received by him on August 27, 2009. He then had 30 days to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation. He responded within the 30-day period by providing a credit report, dated August 23, 2009, which is marked and admitted as Applicant's Exhibit A. Also, he briefly explained that the credit report shows that many of the debts are now paid and that the amount of debt had decreased. The case was assigned to me November 10, 2009.

Findings of Fact

Applicant is a 27-year-old employee of a federal contractor, and he works as a force protection officer. Based on the APO AE mailing addresses in the FORM, Applicant has lived and worked overseas (Kuwait and Iraq) since about April 2007. Applicant is a never-married man who has no children. It appears that this is his initial application for an industrial security clearance.

His employment history includes active duty military service and two periods of unemployment. He served in the U.S. Army beginning in 2001, and he completed his required active service in 2005, when he received an honorable discharge. His discharge paperwork (the DD Form 214) shows that his military education includes the

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 made effective within the Defense Department on September 1, 2006, apply to this case. They supersede or replace the guidelines published in Enclosure 2 to the Directive.

² Directive, Enclosure 3, Paragraph E3.1.7.

³ The file of relevant material consists of Department Counsel's written brief and supporting evidence, which will be identified as exhibits in this decision.

field artillery automated tactical data system course and the combat lifesavers course.⁴ The DD Form 214 also shows that his military decorations and awards include the following: combat patch, Army Achievement Medal, Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, Kosovo Campaign Medal, Army Service Ribbon, Overseas Service Ribbon, and the NATO Medal (Kosovo). He served in Kosovo for about six months during 2002. He was serving as a sergeant (pay grade E5) when he was discharged in 2005.

Applicant was unemployed after leaving the Army for about five months during 2005. His second period of unemployment was for about eight months during 2006–2007. This period of unemployment followed a job termination in July 2006, when he was fired due to tardiness. His unemployment ended in April 2007, when he began his current job as a force protection officer.

In August 2007, Applicant completed a security-clearance application in which he responded to questions about his background.⁵ In response to questions about his financial record, Applicant disclosed a car repossession in March 2007, and a delinquent credit card account with a balance due of about \$5,000. Also, he made additional comments disclosing that he knew he had other delinquent debts, but did not have the names and addresses to report them, and that he was working on paying the debts off.

In January 2009, in response to the Agency's interrogatories, Applicant provided a personal financial statement.⁶ In it, he reported total net monthly income of \$6,689, total monthly expenses of \$255, and a net monthly remainder of \$6,435. His low monthly expenses are likely due to his current employment overseas where employers commonly provide housing and meals. Also, he listed four debts with various amounts and indicated no actual monthly debt payments. In the remarks section, he explained he was in the process of paying his debts within the next four months; he was trying to make payoffs instead of making monthly payments.

The current status of the debts, as alleged in the SOR, is summarized in the following table.⁷

⁴ Exhibit 5 at 4.

⁵ Exhibit 4.

⁶ Exhibit 5 at 3.

⁷ Most record citations are to Exhibit A, the August 2009 credit report, because it is the most recent credit report.

Debts	Status
SOR ¶ 1.a—\$169 collection account (utility bill).	Unpaid—Exhibit A, pages 8–9 of 22.
SOR ¶ 1.b—\$204 collection account (utility bill).	Paid—Exhibit A, pages 15–16 of 22.
SOR ¶ 1.c—\$13,673 collection account (bank credit card).	Settled for less than full amount—Exhibit A, page 7 of 22; Answer (Attachment 1–1).
SOR ¶ 1.d—\$772 collection account (medical).	Paid—Exhibit A, page 12 of 22; Answer (Attachment 1–3).
SOR ¶ 1.e—\$599 collection account (medical).	Unpaid—Exhibit A, page 12 of 22.
SOR ¶ 1.f—\$279 collection account (medical).	Paid—Exhibit A, page 9 of 22; Answer (Attachment 1–2).
SOR ¶ 1.g—\$112 charged-off account (credit card).	Paid—Exhibit A, pages 5–6 of 22; Answer (Attachment 1–5).
SOR ¶ 1.h—\$6,363 collection account (car repossession).	Settled for less than full amount—Exhibit A, page 5 of 22.
SOR ¶ 1.i—\$1,832 collection account (education loan).	Paid—Exhibit A, pages 17–18 of 22.
SOR ¶ 1.j—\$1,100 collection account (credit card).	Paid—Exhibit A, page 11 of 22.
SOR ¶ 1.k—\$613 charged-off account.	Unresolved, but not listed on the two credit reports from 2009 or the Dec. 2008 credit report.
SOR ¶ 1.l—\$847 charged-off account.	Unresolved, but not listed on the two credit reports from 2009 or the Dec. 2008 credit report.

To summarize the information in the table, Applicant paid or settled 8 of the 12 delinquent debts in the SOR. The unpaid and unresolved debts amount to about \$2,200. In addition, Applicant presented proof of payment (a check for \$1,371) that does not correspond exactly to any of the debts alleged.⁸ It might be payment for the debt in SOR ¶ 1.e, as the check is made payable to the collection company alleged.

⁸ Answer (Attachment 1–4).

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.⁹ 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.”¹⁰ 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.¹¹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹²

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹³ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁴ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁵ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁶ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁷ The Agency’s appellate authority has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁸

⁹ *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).

¹⁰ 484 U.S. at 531.

¹¹ Directive, ¶ 3.2.

¹² Directive, ¶ 3.2.

¹³ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁴ Directive, Enclosure 3, ¶ E3.1.14.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ *Egan*, 484 U.S. at 531.

¹⁸ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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 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.¹⁹ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Analysis

Under Guideline F for financial considerations,²⁰ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness, financial problems or difficulties, or financial irresponsibility. A security concern typically exists due to significant unpaid debts. The overall concern under Guideline F is that:

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.²¹

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

The record supports a conclusion that Applicant has a history of financial difficulties dating back several years. His well-established history of financial difficulties raises concerns because it indicates inability or unwillingness to satisfy debts²² and a history of not meeting financial obligations²³ within the meaning of Guideline F. The

¹⁹ Executive Order 10865, § 7.

²⁰ Revised Guidelines, ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²¹ Revised Guidelines, ¶ 18.

²² Revised Guidelines, ¶ 19(a).

²³ Revised Guidelines, ¶ 19(c).

facts are more than sufficient to establish these two disqualifying conditions, and it suggests financial irresponsibility as well.

Under ¶ 20 of Guideline F, there are six conditions that may mitigate security concerns:²⁴

(a) 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;

(b) 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;

(c) 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;

(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) 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

(f) The affluence resulted from a legal source of income.

All of the mitigating conditions have been considered and two are most pertinent here. First, ¶ 20(b) of Guideline F applies in his favor based on his two periods of unemployment during 2005 and 2006–2007. Indeed, the car repossession took place during the unemployment in 2007. Because the second period of unemployment resulted from a job termination for cause, however, the credit in mitigation is reduced. Otherwise, there is no evidence that Applicant acted irresponsibly under the circumstances.

Second, ¶ 20(d) of Guideline F applies in his favor because Applicant has made substantial progress in resolving his delinquent debts. As shown by the table above, he paid or settled 8 of the 12 debts thereby reducing the total indebtedness from about \$26,000 to \$2,200. Given these circumstances, I conclude Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. With his relatively high disposable income (more than \$6,000 monthly), he should be able to resolve the

²⁴ Revised Guidelines, ¶ 20 (a) – (f) (setting forth six mitigating conditions).

remaining four debts for \$2,200 in short order. In other words, it would be unfair and contrary to common sense to say that Applicant is now overextended due to the \$2,200 in delinquent debts in light of his obvious ability to pay. It is also noteworthy that Applicant made this progress while deployed overseas living and working in less than ideal conditions. His persistence to resolve his delinquent debts under these circumstances speaks volumes about his seriousness of purpose and his character. Looking forward, based on his track record of repayment and his high disposable income, it is most likely that Applicant will resolve the outstanding delinquent debts in the near future and that additional financial problems will not recur.

To conclude, based on the record as a whole, I have no doubts or reservations about Applicant's suitability for a security clearance. In reaching this conclusion, I gave due consideration to the nine-factor whole-person concept²⁵ and Applicant's favorable evidence, to include his truthful disclosure of his financial problems when he completed his security-clearance application as well as his record of honorable military service in the post-9/11 world. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for 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:	For Applicant
Subparagraphs 1.a–1.l:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge

²⁵ Revised Guidelines, ¶ 2(a)(1) – (9).