



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 08-07803
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Applicant for Security Clearance)

Appearances

For Government: Emilio Jaksetic, Esq., Department Counsel
For Applicant: *Pro Se*

October 22, 2009

Remand Decision

LEONARD, Michael H., Administrative Judge:

This is a security clearance case¹ in which the Appeal Board remanded for further processing.² In my initial June 15, 2009 decision—which is incorporated herein by reference—I concluded that Applicant deliberately omitted, concealed, or falsified material facts about his use of illegal drugs on two different personnel security

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 ISCR Case No. 08-07803 (App. Bd. Sep. 21, 2009).

questionnaires. On that basis, I decided the Guideline E personal conduct security concerns against Applicant. The Appeal Board remanded the case with instructions to make findings of fact and reach conclusions concerning security concerns alleged in the Statement of Reasons (SOR) under Guidelines F for financial considerations, J for criminal conduct, and G for alcohol consumption.

Findings of Fact

Applicant replied to the SOR allegations as follows: (1) he denied the financial considerations allegations because the five debts in question were paid; (2) he admitted the eight allegations of criminal conduct; (3) his answers to the alcohol consumption allegations were mixed; and (4) he denied the two falsification allegations and attributed the matter to accidental oversight. Based on the record evidence as a whole, the following facts are established by substantial evidence.³

Applicant is a 29-year-old employee of a federal contractor. He is currently employed as a Java developer. He is seeking to obtain an industrial security clearance for the first time.

The SOR alleged and Applicant admitted five delinquent debts in amounts ranging in amounts from \$97 to \$3,655 for a total of \$7,089. These debts are now paid.⁴ The best evidence is Applicant's January 2009 credit report, which shows no current collection accounts.⁵

The SOR alleged and Applicant admitted eight incidents of minor criminal conduct, or involvement with law enforcement, that took place during 1997–2006. Several were alcohol-related incidents. The last incident took place in 2006, when he was charged with public swearing/intoxication, to which he pleaded guilty and paid a fine and costs. Applicant has had no additional incidents since 2006.

The SOR alleged and Applicant admitted, in part, a history of excessive alcohol consumption. The history includes the several alcohol-related incidents involving law enforcement and treatment for his excessive use of alcohol in 2006. Applicant has abstained from alcohol since 2007, and he intends to do so in the future.

³ The findings of fact are limited to the issues on remand.

⁴ Answer; Tr. 28–33; Exhibit 3; and Exhibit C.

⁵ Exhibit C.

Two coworkers submitted letters supporting Applicant's application for a security clearance.⁶ Both coworkers vouched for Applicant's work performance and suitability for access to classified information.

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.⁷ 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."⁸ 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.⁹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹¹ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹³ In addition, an applicant has the ultimate

⁶ Exhibits A and B.

⁷ *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).

⁸ 484 U.S. at 531.

⁹ Directive, ¶ 3.2.

¹⁰ Directive, ¶ 3.2.

¹¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹² Directive, Enclosure 3, ¶ E3.1.14.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

burden of persuasion to obtain a favorable clearance decision.¹⁴ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁵ The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁶

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.¹⁷ 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,¹⁸ 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.¹⁹

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ *Egan*, 484 U.S. at 531.

¹⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁷ Executive Order 10865, § 7.

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

¹⁹ Revised Guidelines, ¶ 18.

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

Both the disqualifying and mitigating conditions should be analyzed in light of the record as a whole. The record here shows Applicant has a history of financial problems or difficulties as evidenced by the five delinquent debts. Taken together, these circumstances raise doubts about Applicant's current reliability, trustworthiness, and good judgment.

Turning first to the disqualifying conditions under ¶ 19 of Guideline F, Applicant's history of financial difficulties raises concerns because it indicates inability or unwillingness to satisfy debts²⁰ and a history of not meeting financial obligations²¹ within the meaning of Guideline F. The facts are more than sufficient to establish the two disqualifying conditions, and it suggests financial irresponsibility as well.

Under ¶ 20 of Guideline F, there are six mitigating conditions as follows:²²

(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

²⁰ Revised Guidelines, ¶ 19(a).

²¹ Revised Guidelines, ¶ 19(c).

²² Revised Guidelines, ¶ 20 (a) – (f) (setting forth six mitigating conditions).

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 the most pertinent here is ¶ 20(d). Applicant mitigated the security concerns based on his good-faith efforts to repay his overdue creditors.

The criminal conduct and alcohol consumption issues are discussed together because the record shows that, for the most part, the two are factually related or connected to each other. Under Guideline J, the overall concern is that “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.”²³ Similarly, under Guideline G, the overall concern is that “excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.”²⁴

Without doubt, Applicant’s history of criminal conduct, mostly alcohol-related incidents, and his history of excessive alcohol consumption raise security concerns and justify application of the pertinent disqualifying conditions under each guideline.²⁵ The record is also clear, however, that Applicant’s last criminal incident took place in January 2006, more than three years ago, and that he has abstained from alcohol since January 2007, more than two years ago. This passage of time without recurrence is evidence of reform and rehabilitation. Given these circumstances, the security concerns are mitigated.²⁶

To conclude, as discussed in my initial decision, Applicant did not present sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns under Guideline E based on his false statements. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the nine-factor whole-person concept²⁷ was given due consideration. This case is decided against Applicant.

²³ Revised Guidelines, ¶ 30.

²⁴ Revised Guidelines, ¶ 21.

²⁵ See Revised Guidelines, ¶¶ 31(a), 31(c), 22(b), 22(c), 22(d), and 22(e).

²⁶ See Revised Guidelines, ¶¶ 31(a), 31 (d), 23(a), and 23(b).

²⁷ Revised Guidelines, ¶ 2(a)(1) – (9).

Formal Findings

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

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.e:	For Applicant
Paragraph 2, Guideline J:	For Applicant
Subparagraphs 2.a–2.h:	For Applicant
Paragraph 3, Guideline G:	For Applicant
Subparagraphs 3.a–3.e:	For Applicant
Paragraph 4, Guideline E:	Against Applicant
Subparagraphs 4.a–4.b:	Against Applicant

Conclusion

In light of all of the circumstances, 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