



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



In the matter of:)
)
-----) ISCR Case No. 08-09619
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, 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 a defaulted student loan with an approximate balance of \$77,237. Applicant has not paid, settled, or otherwise resolved this debt, and he does not have a realistic plan in place to do so. In addition, he might have other delinquent student loan debt. These circumstances create doubts about his judgment, reliability, and trustworthiness. The record contains insufficient evidence to explain, extenuate, or mitigate the security concerns. Accordingly, as explained 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 (the Agency) issued a statement of reasons (SOR) to Applicant on January 26, 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 whether to deny or revoke Applicant's security clearance.

Applicant answered the SOR in a timely fashion, and he requested a hearing. The case was assigned to me August 5, 2009. The hearing took place September 23, 2009. The record was left open until October 7, 2009, to allow Applicant to submit documentary evidence as he submitted none at the hearing. Applicant made a timely submission, which consists of a one-page handwritten letter. It is marked and admitted, without objections, as Applicant's Exhibit A. The transcript (Tr.) was received October 1, 2009.

Findings of Fact

Applicant is a 47-year-old employee of a federal contractor. He has worked as a part-time mail clerk, working about 20 hours per week, since April 2008. His duties as a mail clerk may require him to handle and safeguard classified information. His full-time job is as a stocker or sales associate for a large, well-known retail store. He has held that job since 2002. It appears that this is Applicant's initial application for an industrial security clearance.²

Applicant's educational background includes completing high school. He also attended two or three different colleges, but he did not complete the requirements for a degree. His employment history includes less than one year of service in the U.S. Air Force. He enlisted in 1982, and he received an entry-level separation in 1983.³ He married for the first time in 2005, and he has no children. His wife is not employed outside the home.

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 Exhibit 1.

³ Exhibit 1.

Applicant has a history of financial problems or difficulties as shown by delinquent accounts in credit reports from 2008 and 2009.⁴ The SOR alleged two delinquent accounts. The first is a medical debt for \$1,123 that is now in collection. Applicant believes this debt stems from medical treatment he received for a work-related injury at the store in 2008.

The second debt is a defaulted student loan for \$77,237. The credit reports indicate that a claim has been filed against the guarantor of the loan. The defaulted student loan stems from money Applicant obtained to attend a school of graphic art and cartooning in about 1990–1991. In addition, Applicant believes he might owe another \$80,000 in student loan debt for another college (institute of art) he attended.⁵ That debt is not reflected in the credit reports or otherwise established by the documentary evidence; also, it is not alleged in the SOR.

Applicant has not presented any documentary proof of payment, settlement, or otherwise resolving the debts. In his post-hearing submission, Applicant stated that he contacted the creditors, but the proposed terms of monthly payments are more than he can afford.⁶

Applicant and his wife budget their money on a week-to-week basis, and he describes their overall financial situation as living paycheck-to-paycheck.⁷ Applicant is willing to pay these debts, but he agrees he is unable to do so.⁸

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

⁴ Exhibits 2 and 3.

⁵ Tr. 74–76.

⁶ Exhibit A.

⁷ Tr. 81.

⁸ Tr. 77–78.

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).

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

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

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).

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 here shows 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 facts are more than sufficient to establish the two disqualifying conditions, and they suggest financial irresponsibility as well.

Under ¶ 20 of Guideline F, there are certain 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

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).

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

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 none, either individually or in combination, are sufficient to mitigate and overcome the security concerns stemming from the defaulted student loan with a balance of more than \$75,000. With that said, however, I attach no security significance to the single medical debt for \$1,123 that is now in collection. Experience in the ways of the world suggests that medical debt rarely indicates if the debtor is a high risk because (1) many people are uninsured or underinsured, (2) medical-debt collection has become big business with the buying and selling of debt resulting in more of it appearing in credit reports, and (3) confusion often abounds in medical billing even when a consumer is fully covered by insurance. For these reasons, the single medical debt in SOR ¶ 1.a is decided for Applicant.

Applicant does receive some credit in mitigation under the whole-person concept. It is obvious that Applicant is a hard worker who would be willing to pay his just debts if he had the means to do so. He has held down two jobs, working approximately 60 hours per week, since April 2008. That is no small feat and Applicant is credited accordingly. In addition, Applicant was respectful and serious throughout the hearing, and that attitude will serve him well as he endeavors to repay his debts.

But that credit is not enough to overcome the security concerns stemming from the defaulted student loan. Delinquent student loans, much like delinquent state and federal income taxes and delinquent child-support payments, are viewed with particular disfavor and take on added security significance in light of the nature of the obligation. Further, what is missing here is a plan of action to pay, settle, or otherwise resolve the defaulted student loan. Without a realistic plan and some measurable progress, it is too

early to tell if he will resolve this situation favorably. Looking forward, the likelihood of additional financial problems cannot be ruled out as the situation is not under control.

To conclude, the facts and circumstances surrounding Applicant's defaulted student loan create doubts about his judgment, reliability, and trustworthiness. He did not present sufficient evidence to explain, extenuate, or mitigate the security concerns. In reaching this conclusion, I considered the nine-factor whole-person concept²⁵ and Applicant's favorable evidence. 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:	Against Applicant
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against 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

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