



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



In the matter of:)
)
-----) ISCR Case No. 08-09784
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

For Applicant: Russell W. King, Esq.

October 21, 2009

Decision

LEONARD, Michael H., Administrative Judge:

This is a security clearance case in which Applicant contests the Defense Department’s intent to revoke his eligibility for an industrial security clearance. The action is based on Applicant’s history of financial problems or difficulties. The record shows Applicant has a history of financial difficulties dating back to the events that precipitated a 1997 Chapter 7 bankruptcy, reappeared during 2002-2003, and came to a head again in 2007–2008, with the start of a home foreclosure. Taken together, these circumstances raise doubts about Applicant’s current reliability, trustworthiness, and good judgment, which Applicant did not sufficiently explain, extenuate, or mitigate. 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 (the Agency) issued a statement of reasons (SOR) to Applicant on April 1, 2009. 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. The SOR also recommended submitting the case to an administrative judge for a determination to deny or revoke Applicant's security clearance.

Applicant answered the SOR on April 19, 2009, and requested a hearing. The case was assigned to me on June 8, 2009. The hearing took place as scheduled on July 15, 2009. The record was left open until August 14, 2009, to allow Applicant to submit additional documentary evidence. At Applicant's request, and over the government's objections, that deadline was extended until September 3, 2009, and extended again until September 25, 2009.

The post-hearing matters were timely submitted. They are marked and admitted without further objections as follows: (1) Exhibit H—payment history for mortgage (11 pages); (2) Exhibit I—motor vehicle title (1 page); (3) Exhibit J—correspondence between Applicant and law firm assisting him with disputing information on credit reports (11 pages); and (4) Exhibit K—transaction history for mortgage (5 pages). The hearing transcript (Tr.) was received July 23, 2009. The record closed September 25, 2009.

Findings of Fact

Under Guideline F, the SOR alleged 16 delinquent debts ranging in amounts from \$31 to \$29,562 for a total of about \$47,000. Applicant's answers to the SOR were mixed. Based on the record as a whole, the following facts are established by substantial evidence.

Applicant is a 47-year-old field engineer. He has held his current job with a defense contractor since 2003. His employment history includes active duty military service in the U.S. Air Force from 1980 to 2000, when he retired as a senior noncommissioned officer. He worked as an avionics technician in the Air Force, and he held a clearance at the secret and top-secret levels. He now has a secret-level clearance, and he is seeking a top-secret clearance for his work on a particular aircraft program.

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.

His total compensation is about \$89,000 annually. It consists of his salary of about \$75,000, retirement pay of about \$12,000, and a veteran's disability payment of about \$2,400. His spouse has not worked outside the home since about 1999 or 2000. She just opened a small retail shop, and it is too soon to tell if it will be profitable.

His two previous marriages ended in divorce in 1988 and 1993. He married his current spouse in 1994. He has no children of his own, but has adult stepchildren from his current marriage.

Applicant has a history of financial problems, which he does not dispute. In 1997, Applicant and his wife declared bankruptcy under Chapter 7.² The bankruptcy court granted them a discharge of about \$51,000 in total liabilities, of which about \$22,000 consisted of unsecured debts. In 2003, Applicant attributed the bankruptcy to uninsured medical expenses for his wife and her resulting unemployment as well as bills from his previous marriage.³ In his hearing testimony in 2009, he attributed the bankruptcy to using credit cards to overspend on his then minor stepchildren.⁴

Post-bankruptcy, Applicant had additional financial problems in about 2002–2003. A 2002 credit report reveals derogatory information about multiple accounts, although it notes several of the accounts were included in the 1997 bankruptcy.⁵ For example, it reports two collection accounts, each less than \$100, as well as past-due accounts. Applicant addressed these matters in a 2003 sworn statement,⁶ which reflects that he paid in full five creditors that day, and that he disputed two other debts. The more recent May 2008 and January 2009 credit reports have additional derogatory information, which formed the basis of the SOR allegations.⁷

Other than a company-issued credit card, Applicant has not used credit cards since the 1997 bankruptcy, and it appears that none of the SOR allegations concern credit card debt. Applicant presented documentary proof that he paid the 13 debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, 1.l, 1.m, 1.o, and 1.p.⁸ He is disputing the two debts in ¶¶ 1.k and 1.n for a total amount of \$1,537.⁹ Neither of these debts appears on the most recent July 2009 credit report, which is a three-in-one credit

² Exhibit 4.

³ Exhibit 3.

⁴ Tr. 44.

⁵ Exhibit 7.

⁶ Exhibit 3.

⁷ Exhibits 5 and 6.

⁸ Answer to SOR; Exhibits B, C, G, and I.

⁹ Answer to SOR; Exhibits A, G and J.

report obtained by Applicant.¹⁰ The remaining debt in ¶ 1.c is alleged as a charged-off account for \$29,562. It is the largest debt in the SOR. It stems from a second mortgage Applicant obtained in 2005, when he and his wife bought a home using an 80/20 mortgage loan, which resulted in loans of \$112,000 and \$28,000.

Applicant became aware of his financial problems sometime in late 2007, when his wife informed him that foreclosure was started on their home. She handled the financial matters, and she did not keep Applicant informed of the ongoing financial problems, to include unpaid loans she made to family members for about \$18,000 in total.¹¹ Applicant has since taken responsibility for the family's financial affairs.

Aware of the foreclosure action, Applicant contacted the bank to determine what could be done to remedy the situation. The result appears to be that the bank placed the account in a loan modification program, although Applicant described it as refinancing in his hearing testimony. The loan modification occurred in 2007 or 2008 (Applicant was unable to produce the loan modification agreement), and it caused the principal balance to increase from \$110,003 to \$139,003, a difference of \$28,997. This is nearly the amount of the original second mortgage loan of \$28,000.¹² The July 2009 credit report shows that \$0 is past due on the account.¹³ And the transaction history shows regular monthly payments since at least January 2008, with a balance of \$136,533 as of September 2009.¹⁴

Initially, the two mortgage loans were made and held by the same bank. At some time, it is unclear when, the second loan was purchased by the creditor in SOR ¶ 1.c. And the debt in ¶ 1.c is established by the government's 2008 and 2009 credit reports,¹⁵ which report it as a charged-off account with a balance of \$29,562.

Applicant was unaware of the charged-off account until it was brought to his attention in about May 2008, during the background investigation.¹⁶ He contacted the creditor and then made several monthly payments with a view toward making a lump-sum settlement in the future. But based on the payment history and the transaction history, it now appears the bank repurchased the second mortgage loan when they

¹⁰ Exhibit G.

¹¹ Tr. 33–34.

¹² Exhibits H and K.

¹³ Exhibit G at 9.

¹⁴ Exhibit K.

¹⁵ Exhibits 5 and 6.

¹⁶ Tr. 70–72.

modified the loan.¹⁷ This would explain the increase to principal of \$28,997, as noted above. This finding is also supported by Applicant's July 2009 credit report, because it shows a \$0 balance and \$0 past due for the creditor in ¶ 1.c.¹⁸

Applicant's attributes his recent financial difficulties to his wife's mishandling of their finances and his inattention to the same. Also, Applicant points to the serious health problems of both him and his wife. She has had a hysterectomy, a stroke in 2000 followed by seizures (the most serious of which took place during 2000–2003), and she reports nine surgeries in the last three years. Applicant had a heart attack in 2006, when it was determined he had a 95% blockage in an artery. A stent was inserted, but two additional procedures were required to adjust and then replace the device. He was out of work for about six weeks due to the heart attack, but he used vacation time and sick leave to avoid unpaid time. The medical problems generated out-of-pocket expenses. For example, from July 2008 to present, Applicant and his wife spent about \$6,500 for out-of-pocket medical expenses.¹⁹

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.²⁰ 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."²¹ 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.²² An

¹⁷ Exhibits H and K; see Applicant's testimony at Tr. 58–63 (now his belief that the current mortgage balance includes the money owed to the creditor in SOR ¶ 1.c).

¹⁸ Exhibit G at 5 (for purposes of appellate review, if necessary, I highlighted the relevant sections of the credit report in orange).

¹⁹ Exhibit D.

²⁰ *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).

²¹ 484 U.S. at 531.

²² 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.²³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁴ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁷ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁸ The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁹

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.³⁰ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

²³ Directive, ¶ 3.2.

²⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁵ Directive, Enclosure 3, ¶ E3.1.14.

²⁶ Directive, Enclosure 3, ¶ E3.1.15.

²⁷ Directive, Enclosure 3, ¶ E3.1.15.

²⁸ *Egan*, 484 U.S. at 531.

²⁹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

³⁰ Executive Order 10865, § 7.

Analysis

Under Guideline F for financial considerations,³¹ 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.³²

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 difficulties dating back to the events that precipitated the 1997 Chapter 7 bankruptcy, reappeared during 2002-2003, and came to a head again in 2007–2008, with the start of the home foreclosure. 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 well-established history of financial difficulties raises concerns because it indicates inability or unwillingness to satisfy debts³³ and a history of not meeting financial obligations³⁴ 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:³⁵

(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

³¹ Revised Guidelines, ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

³² Revised Guidelines, ¶ 18.

³³ Revised Guidelines, ¶ 19(a).

³⁴ Revised Guidelines, ¶ 19(c).

³⁵ 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. Applicant receives credit in mitigation under ¶¶ 20(b), 20(c), 20(d), and 20(e). But what is missing here is a track record of financial stability and responsibility buttressed by knowledge and understanding of his financial condition. In this regard, it was troubling that Applicant was uncertain whether he refinanced his mortgage loans or entered into a loan modification agreement. And he obviously did not retain records of the transaction that he could have produced for this proceeding. An applicant for a security clearance is not required to have expertise in personal finance matters, but it is reasonable to expect a 47-year-old military retiree, who is now employed in the defense industry, to give enough attention to his financial affairs so that he has a commonsense understanding of his obligations. Based on the record as a whole, it is simply too soon to tell if he will conduct himself as a financially-responsible person. Looking forward, the likelihood of additional financial problems cannot be ruled out.

Also, I gave due consideration to the nine-factor whole-person concept.³⁶ Applicant is an experienced and mature individual who should be able to handle his financial obligations. He has good intentions and wants to improve his financial condition. He has a good job, earns a decent salary, and enjoys the benefit of retirement pay earned by his military service. These circumstances weigh in his favor. But the foreclosure action is substantial evidence of how unmanageable or out of control his financial situation had become. Although the origins of his recent financial

³⁶ Revised Guidelines, ¶ 2(a)(1) – (9).

problems were likely unknown to him due to his spouse's actions in not keeping him informed, it appears the problems were compounded by his insufficient attention to his financial responsibilities. Without a well-established track record of financial responsibility—which is lacking here—the clearly-consistent standard and *Egan* require 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:	Against Applicant
Subparagraphs 1.a–1.p:	Against Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge