



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



In the matter of:)
)
-----) ISCR Case No. 08-11636
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

January 14, 2011

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for a security clearance to work in the defense industry. The evidence shows Applicant has a history of financial problems or difficulties, which are ongoing. His indebtedness includes \$21,000 owed to a state child-support enforcement agency and more than \$10,000 in back taxes owed to the IRS for multiple tax years. He did not present sufficient evidence to mitigate the security concerns stemming from his history of financial problems. He did not give deliberately false answers to questions about his financial record in 2008, when he completed a security clearance application. Accordingly, as explained below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on December 4, 2009, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find it is clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it sets forth the factual basis for the action under the security guidelines known as Guideline F for financial considerations and Guideline E for personal conduct. The SOR also recommended that the case be submitted to an administrative judge to decide whether to deny or revoke Applicant's security clearance.

Applicant answered the SOR and requested a hearing.² The case was assigned to a judge on July 2, 2010. The case was reassigned to me September 7, 2010. The hearing took place September 14, 2010. The hearing transcript (Tr.) was received September 28, 2010.

The record was kept open until September 30, 2010, to allow Applicant to submit additional documentary information. Applicant made a timely submission and those matters are admitted without objections.³

Findings of Fact

Applicant is a 37-year-old employee of a federal contractor. His educational background includes a bachelor's degree. His first marriage ended in divorce. He married his second wife in 2007. He has five children, four daughters and one son, ranging in age from 22 to 2. His two-year-old daughter is by his second wife, while the other children are from other relationships excluding his first marriage. Applicant was court ordered to pay child support for his oldest child (now an adult), but has otherwise not been subject to child-support orders. He does provide financial support to his other children on an informal, periodic basis.

Applicant is seeking a security clearance for the first time for his employment as a warehouse systems analyst for a federal contractor. He has worked for this federal contractor since September 2008, and he has a good employment record there as shown by a highly favorable letter of recommendation, a good performance evaluation,

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² Appellate Exhibit I.

³ Exhibits T–Y.

and various certificates.⁴ He was unemployed for about a two-month period in 2008, but has otherwise been continuously employed by various employers since at least 2001.

Applicant’s annual salary is about \$40,000. His wife has been unemployed since about June 2008, but she receives unemployment compensation. He has no other sources of income.⁵ As of September 2010, Applicant had about \$1,100 in checking and savings accounts.⁶ He has no other financial accounts.

Applicant has a history of financial problems or difficulties, which are ongoing. In addition to back taxes owed to the IRS, the SOR alleges nine delinquent debts ranging from a \$54 unpaid judgment to a \$51,523 delinquent mortgage loan. The following table summarizes⁷ the status of the nine delinquent debts alleged in the SOR:

<i>Delinquent Debt</i>	<i>Current Status</i>
SOR ¶ 1.a—unpaid judgment entered in 2002 for \$54 stemming from an apartment lease.	Unresolved. (Exhibits 2, 5, 6, and 7)
SOR ¶ 1.b—collection account for \$1,461 stemming from an apartment lease.	Unresolved. (Exhibits 5, 6, 7, and U)
SOR ¶ 1.c—collection account for \$251.	Paid. (Exhibit T)
SOR ¶ 1.d—collection account for \$914.	Settled in full. (Exhibit H)
SOR ¶ 1.e—delinquent mortgage loan for \$51,523 stemming from his first marriage.	Foreclosure sale in 2007; no balance due. (Exhibit C)
SOR ¶ 1.f—collection account for \$7,837.	Unresolved. Judgment entered against Applicant in 2007 for \$7,561 plus costs of \$460 and interest of \$2,094 for a total of more than \$10,000. Applicant is trying to challenge judgment. (Exhibit J)
SOR ¶ 1.g—arrearage of \$10,749 owed to a state child-support enforcement agency.	Unresolved. As of Sept. 2010, owes a total amount due of about \$21,000. (Exhibit W)
SOR ¶ 1.h—collection account for \$414.	Unresolved. (Tr. 87–89)

⁴ Exhibits A, K, and L.

⁵ Tr. 121–122.

⁶ Exhibit R and S.

⁷ As Thoreau said, “Our life is frittered away by detail . . . Simplify, simplify, simplify!”

SOR ¶ 1.i-collection account for \$3,601.	Unresolved. Now owes a total of about \$18,000. (Exhibit O)
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Applicant's delinquent federal income taxes are for several tax years. He owed a small amount, less than \$100, for tax year 1999. The IRS filed a tax lien against Applicant in December 2009, but the lien was released in February 2010 upon payment.⁸ As of April 2010, he had an outstanding balance assessment of \$13,631 for taxes owed for tax years 2003, 2005, 2006, 2007, and 2008.⁹ He entered into an installment agreement to repay this balance with payments of about \$200 due on the 15th on each month. All payments were timely made as of April 2010. He presented no paperwork to reflect a more current status of his indebtedness to the IRS. He explained he fell behind on his federal income taxes due to a combination of circumstances: (1) he did not pay it because he was upset about the child-support arrearage; (2) he made bad decisions; and (3) he lacked the money to pay.¹⁰

In addition, Applicant presented documentary proof of payment for several collection accounts not alleged in the SOR.¹¹ Altogether, he paid off approximately \$1,500 in delinquent debts.

Applicant completed a security clearance application in September 2008.¹² In doing so, he was required to provide truthful answers to various questions about his background, to include his financial record. In response to three questions about his financial record, Applicant answered "no" thereby denying any unpaid judgments, debts more than 180-days delinquent in the last seven years, and debts more than 90-days delinquent currently. He did not report any of the indebtedness alleged in the SOR.

Law and Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. The only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information. The Department of Defense takes the handling and safeguarding of classified information seriously because it affects our national security, the lives of our servicemembers, and our operations abroad.

⁸ Exhibit M.

⁹ Exhibit N.

¹⁰ Tr. 123.

¹¹ Exhibits B, D, E, F, G, P, V, and X.

¹² Exhibit 1.

It is well-established law that no one has a right to a security clearance.¹³ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁴ 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.¹⁵ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁶

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁷ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁰ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²¹ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²²

The AG set forth the relevant standards to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant facts and circumstances, the pertinent criteria and adjudication factors, and the whole-person concept.

¹³ *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).

¹⁴ 484 U.S. at 531.

¹⁵ Directive, ¶ 3.2.

¹⁶ Directive, ¶ 3.2.

¹⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁸ Directive, Enclosure 3, ¶ E3.1.14.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ Directive, Enclosure 3, ¶ E3.1.15.

²¹ *Egan*, 484 U.S. at 531.

²² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.²³ 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,²⁴ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.²⁵ The overall concern under Guideline F is:

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.²⁶

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

The evidence here supports a conclusion that Applicant has a history of financial problems or difficulties. This raises security concerns because it indicates inability or unwillingness to satisfy debts²⁷ and a history of not meeting financial obligations²⁸ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions.

Under Guideline F, there are six conditions that may mitigate security concerns:²⁹

²³ Executive Order 10865, § 7.

²⁴ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁵ See ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted).

²⁶ AG ¶ 18.

²⁷ AG ¶ 19(a).

²⁸ AG ¶ 19(c).

²⁹ AG ¶ 20 (a) – (f).

¶ 20(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;

¶ 20(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;

¶ 20(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;

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

¶ 20(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; and

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

Of those mitigating conditions, the most pertinent are ¶¶ 20(b) and 20(d). Applicant receives credit under each due to his brief period of unemployment, his wife's unemployment, and his efforts to repay his creditors. But the credit in mitigation is not sufficient to overcome the security concerns. There are not clear indications that his financial problems are being resolved or are under control, as the evidence suggests the opposite. As revealed by the table above, Applicant has six unresolved debts for a total of about \$50,000. It does not appear he has the financial means to resolve that indebtedness along with repaying his back taxes to the IRS. And of that \$50,000, approximately \$21,000 of it is a child-support arrearage, which is viewed with disfavor given the nature of the obligation. Looking forward, it is most probable that he will not resolve this situation in the near future, and his financial problems will continue or recur. Accordingly, Guideline F is decided against Applicant.

Under Guideline E for personal conduct, the suitability of an applicant may be questioned or put into doubt due to false statements and credible adverse information that may not be enough to support action under any other guideline. The overall concern under Guideline E is:

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.³⁰

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 answers to three questions about his financial record on the 2008 security clearance application. Rather than analyze each question and answer individually, it is appropriate to consider them together and analyze them based on the evidence as a whole. In doing so, the evidence shows Applicant answered the questions incorrectly as he failed to report the financial matters called for by the questions. Applicant has explained that he did so because he was unaware of what was reflected on his credit history. Having listened to his testimony, observed his demeanor, and reviewed the evidence of his overall financial situation, I am persuaded that he did not have full command and understanding of his financial situation and this shortcoming resulted in his incorrect, but not deliberately false, answers to the questions. Accordingly, Guideline E is decided for Applicant.

To conclude, the evidence of Applicant's financial problems, past and present, justifies current doubts about his judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept³¹ and Applicant's favorable evidence. Nevertheless, Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. At this point, Applicant's suitability or fitness for a security clearance is a work in progress. Time will tell if Applicant has both the ability and willingness to clean up his financial house. This case is decided against Applicant.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.k:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a–2.c:	For Applicant

³⁰ AG ¶ 15.

³¹ AG ¶ 2(a)(1)–(9).

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