



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



In the matter of:)
)
-----) ISCR Case No. 09-00221
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel

For Applicant: *Pro Se*

January 14, 2010

Decision

LEONARD, Michael H., Administrative Judge:

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 evidenced by delinquent accounts, a broken apartment lease, and a mortgage loan that went into foreclosure. Although his current financial situation is much improved, the record contains insufficient evidence to explain, extenuate, or mitigate the security concerns stemming from his problematic credit history. 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 April 20, 2009. The SOR is similar to a complaint, and 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 on August 13, 2009. The hearing took place September 23, 2009. The transcript (Tr.) was received October 1, 2009.

Findings of Fact

Applicant is a 46-year-old field service representative who is employed by a federal contractor. He began his current employment in June 2008, and he completed a security clearance application the same month.² This is his initial application for a security clearance to work in the defense industry.³

Married in 1984, Applicant and his wife have two children and a stepchild. The three children are adults, none of whom reside with Applicant.

His employment history shows he has been continuously employed, except for a few weeks in 2005, since at least June 2000.⁴ He is a journeyman electrician. He is currently enrolled in a correspondence program studying to obtain an associate's degree in electrical engineering.

Applicant traces his financial problems back to the 2005 period, when he and his wife moved to another state so she could accept a job offer to manage a restaurant. Applicant quit his job as an electrician to move with his wife, and he was unemployed for about six weeks until he found employment as a project electrician. His wife's job ended after about three months when she left by mutual agreement with the owner, who proved difficult to work for. When they moved, they were unable to sell their home and

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 revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines), which were 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 Tr. 8.

⁴ Exhibit 1.

rented it only briefly because the tenant did not pay as agreed. They fell behind on their mortgage loan, and in time decided to allow the property to go into foreclosure. The property was sold in March 2006.⁵ After the sale, neither Applicant nor his wife received notice that they owed a deficiency balance.⁶ Multiple credit reports show a zero balance on the account.⁷ The law firm that handled the foreclosure has done nothing with the matter since the sale.⁸ And Applicant provided documentary proof that there are no liens, judgments, or suits pending against him in the county where the foreclosed property is located.⁹

In about January 2006, Applicant found a better job in another state. Taking the job resulted in breaking an apartment lease. Applicant then worked as an electrical lead until 2008, when Applicant began his current employment in another state. His employer provided a relocation package that covered the moving expenses.

Applicant's wife is not currently employed outside the home. She and Applicant live in a rental property near Applicant's place of work, but they also have a rental property in the another state. This arrangement allows Applicant's wife to spend time in both locations and stay in touch with family members.

The SOR alleged five delinquent debts ranging in amounts from \$296 to \$56,000, for a total of approximately \$63,500. The current status of the debts is summarized in the following table.

<i>Debts</i>	<i>Status</i>
SOR ¶ 1.a—\$296 charged-off credit card account.	Unresolved; account was closed or transferred and \$1,041 was written off (Exhibit 2). Credit reports show a zero balance owed to the original creditor (Exhibits 3, 4, and 5).
SOR ¶ 1.b—\$56,000 delinquent mortgage loan.	Foreclosure completed and property sold in Mar. 2006; details discussed above.
SOR ¶ 1.c—\$4,954 collection account stemming from the broken lease in 2006.	Settled for \$3,700 in Jun. 2009 (Exhibit B).

⁵ Exhibit 2.

⁶ Tr. 80–81.

⁷ Exhibits 2, 3, 4, and 5.

⁸ Exhibit 2.

⁹ Exhibit A.

SOR ¶ 1.d—\$1,504 charged-off credit card account.	Settled in Aug. 2008 (Exhibits D and F).
SOR ¶ 1.e—\$780 collection account.	Account closed with a zero balance (Exhibit E).

In addition to the five debts in the SOR, Applicant provided documentary proof that he paid in full a charged-off account in February 2009.¹⁰

Applicant attributes his financial problems to poor judgment when he and his wife overextended themselves financially.¹¹ He describes his current financial situation as “the best it’s been” and believes they “are in good shape.”¹² They have no current credit card accounts and use a debit card to manage their money. They have about \$1,500 in cash accounts. His gross income for 2008 was about \$103,000, and he estimates his gross income for 2009 at about \$71,000. They are currently working with a mortgage banker to improve their credit score in hopes of purchasing the home they are renting in their home state.

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.¹³ 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.”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

¹⁰ Exhibit C.

¹¹ Tr. 70, 83–84.

¹² Tr. 82.

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.

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 Agency's appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²²

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.²³ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

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).

²³ Executive Order 10865, § 7.

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, 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.²⁵

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. This history raises concerns because it indicates inability or unwillingness to satisfy debts²⁶ and a history of not meeting financial obligations²⁷ within the meaning of Guideline F. The facts are more than sufficient to establish these two disqualifying conditions, and they suggest financial irresponsibility as well.

Under ¶ 20 of Guideline F, there are six conditions that may mitigate security concerns.²⁸ Of the six conditions, the record shows that three apply in Applicant's favor as follows:

(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; and

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

²⁵ Revised Guidelines, ¶ 18.

²⁶ Revised Guidelines, ¶ 19(a).

²⁷ Revised Guidelines, ¶ 19(c).

²⁸ Revised Guidelines, ¶ 20 (a) – (f) (setting forth six mitigating conditions).

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

This is a close case, but the credit in mitigation is insufficient to overcome the security concerns raised by Applicant's problematic credit history. His history includes more than the typical collection and charged-off credit accounts. In 2005, Applicant and his wife made the conscious decision to allow the property to go into foreclosure proceedings. He does not know with absolute certainty, but it appears that a deficiency balance is not owed. Following the foreclosure, Applicant made a conscious decision in 2006, when he broke an apartment lease to start a new job in another state. While that may be the cost of accepting a new job, it was the height of financial irresponsibility to do nothing with the debt until about June 2009 (two months after the SOR was issued to him), when the debt was settled for a lesser amount. The other delinquent consumer debts complete the picture. Looking forward, based on his problematic credit history and his uneven efforts to address it, the likelihood of additional financial problems cannot be ruled out at this time.

To conclude, the facts and circumstances surrounding Applicant's history of financial difficulties create current 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 gave due consideration to the nine-factor whole-person concept²⁹ 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
Subparagraphs 1.a–1.e:	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

²⁹ Revised Guidelines, ¶ 2(a)(1) – (9).