



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



In the matter of:)
)
-----) ISCR Case No. 09-00779
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

For Applicant: *Pro Se*

January 8, 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 current and past collection accounts, a student loan collection account, and an unpaid judgment on which he has made no payments since the judgment was entered in 2005. Sixteen delinquent debts for about \$16,000 remain unpaid. Although the student loan was rehabilitated and he paid three small collection accounts, 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 June 12, 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 5, 2009. The hearing took place September 21, 2009. The record was left open until October 5, 2009, to allow Applicant to submit additional documentary evidence. Applicant made a timely submission, and the post-hearing matters are marked and admitted, without objections, as follows: Exhibit E—student loan documents (four pages); and Exhibit F—two letters of recommendation. The transcript (Tr.) was received September 29, 2009.

Findings of Fact

Applicant is a 31-year-old aircraft mechanic who is employed by federal contractor. He began his current employment in October 2007, and he completed a security-clearance application in October 2008.² This is the first time he has applied for an industrial security clearance.³

Applicant married in 1998, and he divorced in 2002. He has two children from the marriage, ages 9 and 11, and both children have lived with him since the divorce. He is currently living with his fiancée.

His employment history includes periods of unemployment during 2001–2005, and for a three-month period in 2006. The first period of unemployment coincided with his attendance at a technical college during 2002–2004. After earning his degree or certificate as an airframe and power plant (A & P) mechanic in December 2004, he began his first job, as a contract employee, working as an A & P mechanic in September 2005. He was laid off in May 2006. He resumed employment, again as a contract employee, in July 2006, working as an A & P mechanic until he began his

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.

current job as an aircraft mechanic in October 2007. Applicant describes his current job as his best-paying and most-stable employment.

The SOR alleged 20 delinquent debts ranging in amounts from \$25 to \$14,730, for a total of approximately \$31,000. In his answer, Applicant admitted 15 debts, denied 5 debts, and provided some brief explanations. The debts, which are established by an October 2008 credit report,⁴ include an unpaid judgment for \$1,412 and a student loan account in collection for \$14,730. The current status of the debts is summarized in the following table.⁵

<i>Debts</i>	<i>Status</i>
SOR ¶ 1.a—\$1,412 unpaid judgment entered in October 2005.	Unpaid.
SOR ¶ 1.b—\$600 collection account.	Unpaid.
SOR ¶ 1.c—\$68 collection account.	Unpaid.
SOR ¶ 1.d—\$1,029 collection account.	Unpaid.
SOR ¶ 1.e—\$425 collection account.	Unpaid.
SOR ¶ 1.f—\$6,053 collection account based on a deficiency balance from an auto repossession.	Unpaid.
SOR ¶ 1.g—\$108 collection account.	Unpaid.
SOR ¶ 1.h—\$1,042 collection account.	Unpaid.
SOR ¶ 1.i—\$203 collection account.	Unpaid.
SOR ¶ 1.j—\$25 medical collection account.	Paid (Exhibit A).
SOR ¶ 1.k—\$33 collection account.	Paid (Exhibit A).
SOR ¶ 1.l—\$130 collection account.	Paid (Exhibit A).
SOR ¶ 1.m—\$128 medical collection account.	Unpaid.
SOR ¶ 1.n—\$101 collection account.	Unpaid.

⁴ Exhibit 3.

⁵ Applicant addressed the individual debts under cross-examination. Tr. 48–53.

SOR ¶ 1.o—\$3,911 collection account.	Unpaid. Received settlement offer with a 75% discount, but does not have sufficient funds to accept it (Exhibit D).
SOR ¶ 1.p—\$14,730 collection account stemming from defaulted student loans.	Rehabilitated and repurchased by Sallie Mae, which granted a school deferment (he's now a part-time student) beginning in Aug. 2009, and ending in May 2010; balance is \$14,194 (Exhibits C and E).
SOR ¶ 1.q—\$93 medical collection account.	Unpaid.
SOR ¶ 1.r—\$354 medical collection account.	Unpaid.
SOR ¶ 1.s—\$456 collection account.	Unpaid.
SOR ¶ 1.t—\$134 medical collection account.	Unpaid.

To sum up, Applicant paid three small debts for a total of \$189, and he rehabilitated the student loan account, payment of which is now deferred. Sixteen delinquent debts for about \$16,000 remain unpaid.

In March 2009, Applicant applied for a consolidation loan via a credit card account with a major bank in an effort to address his unpaid delinquent debts (Exhibit B). The bank denied his application due to his derogatory credit history (Exhibit 2). One month later, Applicant sought consumer counseling from a nonprofit organization, and the counselor recommended consolidating the debts into a debt-management plan requiring a \$480 monthly payment, which was beyond Applicant's ability to pay (Exhibits B and 2).

In general, Applicant's plan is to save money in a separate account that he will use to repay his delinquent debts. He believes this approach will work best as it will allow him to accumulate enough money to negotiate lump-sum settlements, paying off his creditors one at a time. He attributes his financial problems to his divorce in 2002, and his periods of unemployment and unstable employment. He was able to make forward progress on resolving his financial problems since obtaining his current job in October 2007.⁶

⁶ Tr. 58–59.

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 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’s appellate authority has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁶

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.

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).

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

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 debts²⁰ and a history of not meeting financial obligations²¹ within the meaning of

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.

²⁰ Revised Guidelines, ¶ 19(a).

²¹ Revised Guidelines, ¶ 19(c).

Guideline F. The facts are more than sufficient to establish these two disqualifying conditions, and they suggest some financial irresponsibility as well.

Under ¶ 20 of Guideline F, there are six conditions that may mitigate security concerns.²² Of the six conditions, 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

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

First, ¶ 20(b) applies because Applicant's financial difficulties were largely due to his divorce, his status as a single parent, and his periods of unemployment and unstable employment, all of which were circumstances largely beyond his control. Second, ¶ 20(c) applies because there are clear indications that Applicant's financial problems, while ongoing, are being resolved, which will take time. And third, ¶ 20(d) applies because Applicant has made some progress in resolving his delinquent indebtedness. Most significantly, he rehabilitated the student loan collection account by making several monthly payments resulting in repurchase of the account by Sallie Mae. He also paid three small collection accounts, and he has a general plan to address his other debts. Given these circumstances, I conclude Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Although Applicant deserves credit for his efforts, the credit in mitigation is insufficient to overcome the security concerns raised by his history of financial difficulties. His history includes current and past collection accounts, a defaulted student loan account, and an unpaid judgment on which he has made no payments since the judgment was entered in 2005. Sixteen delinquent debts for about \$16,000 remain unpaid. Looking forward, based on his limited track record of repayment, it is too soon to tell if Applicant will resolve his delinquent debts in the near future and if additional financial problems will not recur.

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-

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

factor whole-person concept²³ and Applicant's favorable evidence, including his favorable character references.²⁴ 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.j, 1.k, 1.l, and 1.p:	For Applicant
Remaining Subparagraphs:	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

²³ Revised Guidelines, ¶ 2(a)(1) – (9).

²⁴ Exhibit F.