



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-01011
)
Applicant for Security Clearance)

Appearances

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

July 18, 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 he has a history of financial problems or difficulties. Although he did not present a perfect case, and has not paid off each and every debt at issue, he presented sufficient evidence to establish a good-faith effort to repay overdue creditors or otherwise resolve debts, thereby mitigating the security concerns stemming from his problematic financial history. He did not provide deliberately false answers in response to two questions on his security clearance application. Accordingly, as explained below, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on October 1, 2010, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual basis for the action under the security guideline known as Guideline F for financial considerations. The SOR alleged 21 delinquent debts in amounts ranging from \$36 to \$4,470 for a total of about \$14,916. The 21 debts consist of collection accounts, charged-off accounts, and an unpaid judgment; 11 debts are for relatively small amounts (less than \$250).

Applicant answered the SOR and requested a hearing. The case was assigned to me February 9, 2011. The hearing took place March 28, 2011. The transcript (Tr.) was received April 5, 2011.

The record was kept open for 30 days, until April 28, 2011, to provide Applicant an opportunity to submit additional documentary information in support of his case. He made a timely submission, and those matters are admitted, without objections, as Exhibits P–U.

Rulings on Procedure

The SOR was amended to correct a clerical error in SOR ¶ 2.b by changing “subparagraphs 1.a through 1.v, above” to “subparagraphs 1.a through 1.u, above.” Without objections, the motion to amend was granted.

Findings of Fact

Applicant is a 33-year-old employee of a federal contractor. His educational background includes attending a college of aeronautics and technology during 2006–2008. He did so to facilitate a career switch to the aviation field. He had a full-time job while in college, working as a testing technician. He was awarded a degree as an aviation electrician in March 2008, and he began his current employment as an aircraft electrician the same month. In addition, he is currently pursuing a bachelor’s degree in applied science. His employer is providing tuition assistance and he also receives GI Bill benefits. He is seeking an industrial security clearance for the first time.

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 contained in Enclosure 2 to the Directive.

Applicant's employment history includes military service in the U.S. Marine Corps during 1995–2002.² While on active duty, he was trained and worked as an engineer equipment operator. He was honorably discharged as a sergeant, pay grade E-5. He received two good conduct medals during his military service. Since his discharge in November 2002, he had eight different jobs before beginning his current job in March 2008. Previously in 2005, he was terminated from one of those jobs, working as a mechanic for a railroad, due to violation of company policy by leaving a vehicle unattended with the engine running. Recently, he had a short-term disability for about 60 days in early 2011 due to a broken hand, and he received 75% of his covered earnings during this period.³

Applicant has a good employment record for his current job as verified by his current supervisor and a recent annual evaluation.⁴ His annual evaluation for March 2009–March 2010 is highly favorable with an overall performance rating of “far exceeds expectations.” His supervisor also described him in highly favorable terms as follows:

[Applicant] is one of the most reliable employees I have working for me. His work performance and knowledge is outstanding, but the most important item of [his] character is reliability. I have over 100 employees working for me and I can say that I count on [Applicant] more than any of the others. If I have a highly important (time/cost critical) task, I always assign it to [Applicant] because I know the job will be completed ahead of the deadline and the quality of work will be outstanding. I actually have 2 tasks on every aircraft that I will only allow him to accomplish. [Applicant] was awarded a Top Star award this year for his outstanding work performance and dedication to [the company].⁵

Applicant and his first wife separated while he was on active duty in the Marine Corps. Thereafter, a divorce was finalized in October 2002, in which Applicant was required to pay child support for his daughter born during the marriage.⁶ As additional child support, he was ordered to provide medical support for the child. He began to fall behind on these obligations in late 2004 after leaving his job as a detention officer at a sheriff's office. In time, this led an enforcement action in October 2008, when Applicant was found in contempt for failure to pay child support and medical bills as previously ordered.⁷ The court determined that: (1) he was in arrears for \$1,302 for the period

² Exhibit 2.

³ Exhibit B.

⁴ Exhibits N and O.

⁵ Exhibit N.

⁶ Exhibit C.

⁷ Exhibit D.

November 26, 2002, through August 1, 2008; (2) he was in arrears for \$776.12 for unpaid medical bills; and (3) he was liable for \$881.40 for attorney’s fees and costs. These unpaid medical bills are the same medical bills alleged in SOR ¶¶ 1.k, 1.l, 1.m, 1.p, and 1.u, which total \$777. As a result, the court granted a cumulative judgment against him for \$2,959.52. Applicant has since paid the judgment, and he is current with his ongoing child support obligation. None of the child support matters are alleged in the SOR.

Applicant married his current wife in 2007, and they have two very young children. His wife is not employed outside the home, and in fact she receives monthly disability compensation from the Social Security Administration. She was determined disabled due to an assault by a former boyfriend.

Applicant completed a security clearance application in November 2008.⁸ In doing so, he did not disclose the unpaid \$159 judgment alleged in SOR ¶ 1.q in response to the relevant question about unpaid judgments. Also, he did not disclose any of the delinquent debts alleged in the SOR in response to the relevant question about delinquent debts. But he did disclose the following adverse information: (1) the job termination from the railroad in 2005; (2) a single incident of domestic violence in 2008; and (3) the child support enforcement action in 2008. He explained in his testimony that he answered the financial questions in the negative because he did not know the details of his financial situation, and he answered in the negative rather than answer in the affirmative and be unable to disclose any details.⁹ He also explained that he had no intention to provide false answers and was not trying to hide anything.¹⁰ I found his explanations credible and worthy of belief.

Concerning the debts alleged in the SOR, Applicant demonstrated through his testimony and documentary exhibits that 12 of the 21 debts are paid or settled; 2 debts are otherwise resolved; 2 debts are in the process of repayment; 4 debts are unresolved; and 1 debt is a duplicate. The four unresolved debts are generally the largest individual debts and total about \$9,901. In addition, he presented proof of payment in November 2009 for a collection account not alleged in the SOR.¹¹ The current status of the debts alleged in the SOR is described in the following table.

<i>Debt</i>	<i>Current Status</i>
SOR ¶ 1.a–\$124 collection account.	Paid as of Feb. 2011. (Exhibit E)

⁸ Exhibit 1.

⁹ Tr. 31–32.

¹⁰ Tr. 106–109.

¹¹ Exhibit F.

SOR ¶ 1.b—\$59 medical collection account.	Paid as of Apr. 2011. (Exhibit T)
SOR ¶ 1.c—\$266 collection account.	Otherwise resolved. Collection action stopped and account returned to original creditor because not his debt. (Exhibit J; Tr. 82–84)
SOR ¶ 1.d—\$137 collection account.	Paid as of Mar. 2011. (Exhibit I; Tr. 84–85)
SOR ¶ 1.e—\$117 collection account.	Paid \$117 as of Feb. 2008, but owes additional \$42. (Exhibit G; Tr. 85–86)
SOR ¶ 1.f—\$1,966 collection account.	Unresolved. Debt incurred when broke lease to move in with parents. Cannot afford to make payment in full; intends to pay when other debts are resolved.
SOR ¶ 1.g—\$127 collection account.	Paid as of Feb. 2011. (Exhibit H)
SOR ¶ 1.h—\$1,048 charged-off account.	In repayment of a settlement offer of \$524. (Exhibit M; Tr. 88–89)
SOR ¶ 1.i—\$389 charged-off account.	Unresolved. (Tr. 88–89)
SOR ¶ 1.j—\$583 collection account.	Settled for \$175 as of Apr. 2011. (Exhibits L and P)
SOR ¶¶ 1.k, 1.l, 1.m, 1.p, and 1.u—unpaid medical collection accounts for \$36, \$45, \$442, \$71, and \$183, for a total of \$777.	Paid. Debts incurred for medical bills for his daughter; paid \$776.12 for medical bills per 2008 child support enforcement action. (Exhibit C; Tr. 92–95)
SOR ¶ 1.n—\$4,470 charged-off account.	Unresolved. Likely a deficiency balance after a voluntary auto repossession in 2008. No contact from creditor. (Tr. 95–101)
SOR ¶ 1.o—\$206 collection account with U.S. Department of Veterans Affairs (VA).	Otherwise resolved. He is currently receiving education benefits from VA and any debt would be deducted from benefits. (Tr. 101–102)
SOR ¶ 1.q—\$159 unpaid judgment.	Same as SOR ¶ 1.e.
SOR ¶ 1.r—\$789 collection account.	In repayment with irregular payments. (Tr. 102–104).
SOR ¶ 1.s—\$623 collection account.	Settled for \$210 as of Mar. 2011. (Exhibits K and S).

SOR ¶ 1.t–\$3,076 charged-off account.	Unresolved. Likely a deficiency balance after a voluntary auto repossession in 2007. No contact from creditor. (Tr. 99–101)
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Applicant’s written monthly budget reflects a household net income of \$4,250, fixed expenses of \$2,790, and a net remainder of \$1,460.¹² The budget also reflects \$3,000 in the bank and \$8,000 in a 401(k) account. He believes that his financial situation is stabilizing due to his improved income, which has allowed him to pay his current expenses and repay delinquent debt. He and his wife are not incurring new debt based on credit.

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.

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

¹² Exhibits A and U.

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.

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.

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:

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.

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).

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.

There are six mitigating conditions to consider under Guideline F. Any of the following may mitigate security concerns:

¶ 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; or

²⁶ AG ¶ 18.

²⁷ AG ¶ 19(a).

²⁸ AG ¶ 19(c).

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

The most pertinent here is ¶ 20(d)—making a good-faith effort—and it is discussed below.

Applicant's problematic financial history appears to be due to an unstable or inconsistent employment history since his discharge from the Marine Corps in 2002. It was probably made more difficult by his legal and moral obligation to pay child support and associated medical bills for his daughter, because once he fell behind, it was difficult to become current. It came to a head with the enforcement action in 2008, and he is now current on all child support matters. Roughly concurrent with his resolving the child support matter, he completed college and began a new career as an aircraft electrician in 2008. Since then, his employment and finances have become more stable or consistent. He is doing quite well at work and is pursuing further education to improve his prospects with his employer.

Applicant has also been able to pay his current expenses and successfully address many of his delinquent debts. As set forth in the table above, 12 of the 21 debts are paid or settled; 2 debts are otherwise resolved; 2 debts are in the process of repayment; 4 debts are unresolved; and 1 debt is a duplicate. The four unresolved debts are generally the largest individual debts and total about \$9,901. In addition, he presented proof of payment in November 2009 for a collection account not alleged in the SOR. And unlike many applicants in financial cases, he did a good job of providing documentary evidence to support or corroborate his representations about his efforts to address the debts. His written monthly budget reflects a positive net remainder of more than \$1,000, and he is beginning to accumulate a small amount of financial assets. This money will allow him to address his outstanding delinquent debts. Although he did not present a perfect case, and has not paid off each and every debt in the SOR, he has made substantial progress. Given the totality of facts and circumstances, I conclude that Applicant has initiated a good-faith effort to repay his overdue creditors or otherwise resolve debts, thereby mitigating the security concerns stemming from his problematic financial history.

Under Guideline E for personal conduct,²⁹ 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

²⁹ AG ¶¶ 15–17 (setting forth the security concern and the disqualifying and mitigating conditions).

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 whether Applicant made deliberately false statements when answering two questions about his financial record on his 2008 security clearance application. Based on the evidence, to include his hearing testimony, which I found credible, I am not persuaded he made deliberately false statements. He answered the questions in the negative because he did not know the details of his financial situation. Any intent to willfully falsify is rebutted by his willingness to disclose: (1) the job termination from the railroad in 2005; (2) a single incident of domestic violence in 2008; and (3) the child support enforcement action in 2008. Given those disclosures, I am not persuaded that he was attempting to mislead or conceal adverse financial information in order to put his security clearance application in a more favorable light.

To conclude, Applicant presented sufficient evidence to overcome the security concerns, and I am persuaded that he will exercise the required good judgment, reliability, and trustworthiness. In reaching this conclusion, I gave due consideration to the nine factors of the whole-person concept.³¹ He received favorable consideration for his honorable military service, his current good employment record, and his improving overall financial situation. Accordingly, I conclude that Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for Applicant.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.u:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a–2.b:	For Applicant

³⁰ AG ¶ 15.

³¹ AG ¶ 2(a)(1)–(9).

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge