



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



In the matter of:)
)
-----) ISCR Case No. 09-01045
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Michael Lyles, Esq., Department Counsel

For Applicant: *Pro Se*

March 30, 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 evidence shows Applicant has a history of financial problems. He attributes the financial problems to his wife’s unemployment beginning in about 2005 or 2006, when she lost her job as a nurse due to her addiction to pain medication and related conduct, and she then turned to alcohol. His wife abused credit cards during this period and hid their financial problems from him. His wife has now been abstinent of both substances for several years. Applicant has made some progress in addressing his delinquent debts, but the progress is of recent vintage and he has substantial work to do. 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 on June 25, 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 detailed the factual basis for the action under the security guideline known as Guideline F for financial considerations. 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 in a timely fashion and requested a decision without a hearing. He also admitted the six debts alleged in the SOR and provided a short explanation. In turn, Department Counsel timely requested a hearing.² The case was assigned to me September 10, 2009. The hearing took place November 17, 2009. The transcript (Tr.) was received December 7, 2009.

Findings of Fact

Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 45-year-old employee who is seeking an industrial security clearance for the first time. His employment history includes active duty military service in the U.S. Air Force during 1984–1995, when he held a security clearance. He is currently employed by a federal contractor as an instructor teaching at an explosive ordnance disposal school. He estimated his 2008 gross income at \$52,000, and he expected to earn slightly less in 2009.³ In addition, he receives military separation pay of about \$4,600 annually.⁴

Applicant completed a security clearance application in October 2008.⁵ In doing so, he was required to give full, frank, and truthful answers to the various questions about his background. In response to Question 27 about his financial record, Applicant

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), effective within the Defense Department on September 1, 2006, apply to this case. They replace the guidelines published in Enclosure 2 to the Directive.

² Hearing Exhibit I.

³ Tr. 67–68.

⁴ Tr. 65.

⁵ Exhibit 1.

disclosed two foreclosure actions. The first foreclosure action was for \$175,755 and had an estimated date of July 2006. The second foreclosure action (on a second mortgage) was for \$54,092 and had an estimated date of December 2006. In addition, in response to Question 28 about financial delinquencies, Applicant disclosed five credit card accounts that were then delinquent in the total amount of about \$25,000. He also noted that his wife had used cash advances to pay mortgage debt, and that he was in the initial stages of pursuing a Chapter 13 bankruptcy case.

He traces his financial problems to 2005 or 2006, when his wife lost her job as a nurse due to her addiction to pain medication and related conduct. She turned to vodka after losing access to pain medication. She was able to hide her alcoholism and the financial problems from Applicant. Specifically, she used credit card accounts to obtain cash advances. Applicant discovered the financial problems when he was served with a foreclosure action on a second mortgage in approximately December 2006. His wife then informed him of a foreclosure action on the primary mortgage and it was then too late to take any remedial action.

With his teenage daughter, Applicant moved out of the house as he concluded he could no longer trust his wife. His intent was to pursue divorce. After the foreclosure action concluded, he decided to try to reconcile with his wife after concluding that he was obliged to honor his marital vows. He and his wife are still married and their 18-year-old daughter resides in their home as well. His wife has not worked outside the home since losing her job as a nurse.

The SOR concerns six delinquent debts (the second mortgage, four credit card accounts, and a past-due auto loan) for a total of about \$73,348. The six debts are established by Applicant's admissions and credit reports from 2008 and 2009.⁶ The status of the debts is discussed below.

The delinquent debt for \$3,192 in SOR ¶ 1.a stems from a credit card account. The 2008 credit report shows it was 150 days past due; the 2009 credit report describes it as a charged-off account. A collection agency is now pursuing the debt and contacted Applicant by letter in November 2009.⁷ Applicant entered into a repayment agreement with the creditor wherein he agreed to pay \$150 monthly to resolve the debt. Other than the demand letter, Applicant presented no paperwork on the debt.

Applicant grouped the delinquent debts in SOR ¶¶ 1.b, 1.c, and 1.d together because they are now with the same creditor. Two debts, for \$9,957 and \$2,011, stem from credit card accounts. The third debt for \$39,740 stems from Applicant's second mortgage. Applicant testified that these three debts have been lumped into one account,

⁶ Exhibits 2 and 3.

⁷ Exhibit A.

and he has made three \$255 monthly payments on the account since August 2009.⁸ But the account paperwork lists only the account number and creditor name for the second mortgage debt with a balance of \$41,364 as of October 2009. The balance due is consistent with the second mortgage debt, as opposed to the cumulative total of the three debts, which is closer to \$51,000. He presented no other paperwork on these three debts.

The delinquent debt is SOR ¶ 1.e for \$17,509 stems from a credit card account. The 2008 credit report describes it as a collection account with a balance of \$14,858; the 2009 credit report describes it as a collection account with a balance of \$17,509. A collection agency is now pursuing the debt and contacted Applicant by letter in October 2009.⁹ The demand letter noted a balance due of \$21,936, but offered Applicant a chance to settle the account for a lump-sum payment of \$7,677. Applicant does not have sufficient funds to accept the settlement offer, but he hopes to enter into a repayment agreement with the creditor.¹⁰ Other than the demand letter, Applicant presented no paperwork on the debt.

The past-due debt in SOR ¶ 1.f for \$939 stems from an auto loan. The 2008 credit report describes it as 60 days past due in the amount of \$712 with a balance of \$1,841. The 2009 credit report describes it as 120 days past due in the amount of \$939 with a balance of \$853. Applicant testified that he paid off this auto loan, but he did not present proof of payment or other paperwork on the debt.

In addition to the debts in the SOR, Applicant presented proof of payment on a credit card account.¹¹ This account appears in both credit reports with a zero balance.

Applicant is currently living paycheck to paycheck without any money in the bank or cash accounts as a financial reserve.¹² Neither Applicant nor his wife has any active credit card accounts. Applicant has assumed responsibility for the household finances, a chore his wife used to do, and he maintains strict control over the household's financial transactions.

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.

⁸ Exhibit D.

⁹ Exhibit B.

¹⁰ Tr. 53.

¹¹ Exhibit C.

¹² Tr. 69.

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 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

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).

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.

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 here supports a conclusion that Applicant has a history of financial problems or difficulties as shown by the more than \$70,000 in delinquent debt that he is now facing. 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.

²³ Executive Order 10865, § 7.

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).

Under ¶ 20 of Guideline F, there are six conditions that may mitigate security concerns.²⁸ The six conditions are as follows:

- (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;
- (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; and
- (f) The affluence resulted from a legal source of income.

The record supports a conclusion that both ¶¶ 20(b) and 20(d) apply in mitigation. It is apparent that Applicant's financial problems stem from quite difficult and unexpected circumstances largely beyond his control when his wife experienced her problems in the 2005–2006 period. This is not a case where an applicant is engaging in high living or otherwise spending beyond his means. And Applicant also receives limited credit for his efforts to address his financial problems as described above in the findings of fact.

Although he presented evidence in mitigation, the credit in mitigation is insufficient to overcome the security concerns. His financial problems started in about 2006 with the foreclosure actions, which was about three years ago. Since then, he has made little progress in resolving his financial problems. Indeed, the two repayment agreements began recently in August and November 2009, which suggests Applicant took the action in light of this proceeding.

Looking forward, based on the more than \$70,000 in delinquent debt that Applicant is facing and his limited means to address it, it is too soon to rule out the

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

likelihood of additional financial problems. What is missing here is a realistic plan (based on his ability to pay) along with a well-established track record of adhering to the plan. Although Applicant has good intentions and wants to repay his creditors, his track record of repayment at this point is too skimpy to make any safe predictive judgments about the future.

To conclude, the facts and circumstances surrounding Applicant's ongoing financial problems justify current doubts about his judgment, reliability, and trustworthiness. He did not present sufficient evidence to explain, extenuate, or mitigate his history of financial problems and the concomitant security concerns. In reaching this conclusion, I gave due consideration to the 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 are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.f:	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).