



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



In the matter of:)
)
-----) ISCR Case No. 09-01960
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank Jr., Esq., Department Counsel
For Applicant: *Pro se*

June 22, 2010

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 record evidence shows Applicant has a history of financial problems, which is ongoing and not under control. There is insufficient evidence to explain, extenuate, or mitigate the security concerns stemming from his history of financial problems. Accordingly, as explained in further detail below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on October 1, 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 hearing. The case was assigned to me December 3, 2009. The hearing took place February 2, 2010. The hearing transcript (Tr.) was received February 16, 2010.

The record was kept open until March 1, 2010, to allow Applicant to submit additional documentary evidence. His post-hearing submission was a bit haphazard (it was initially misdirected and submitted piecemeal in two major parts). It also contains duplications, which were removed and placed in the blue correspondence folder of the case file along with Department Counsel's cover letters describing Applicant's submissions. In addition to Applicant's Exhibits A and B admitted at hearing, the following post-hearing documents are admitted without objections:

- Exhibit C—Applicant's cover letter, dated March 6, 2010;
- Exhibit D—Correspondence from consumer law firm, dated February 5, 2010;
- Exhibit E—One page of a credit report, dated March 6, 2010, showing disputes;
- Exhibit F—Applicant's military retiree account statement, dated December 2009;
- Exhibit G—Letter of reference, dated February 16, 2010;
- Exhibit H—Letter of reference, undated;
- Exhibit I—Account statement from AAFES, dated February 2, 2010;
- Exhibit J—Paid-in-full letter, dated February 22, 2010;
- Exhibit K—Paid-in-full letter, dated May 26, 2008;
- Exhibit L—Form 1099-R for Applicant's 2009 military retirement pay;
- Exhibit M—Bank account statement, dated February 11, 2010;
- Exhibit N—Bank credit line statement, dated January 27, 2010; and
- Exhibit O—Copy of money order, dated February 15, 2010.

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.

Findings of Fact

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

Applicant is a 52-year-old employee of a federal contractor. He is seeking to obtain a security clearance, although he held one in the past. He married in 1982 and divorced in 2004. He and his wife reconciled within months of divorce and have since lived together unmarried. There are no minor children in his household.

Applicant's employment history includes more than 20 years of honorable military service in the U.S. Army, which ended with his retirement in 1998. He retired as a senior noncommissioned officer (pay grade E-7), and he receives taxable retired pay of \$1,448 monthly;² he received taxable retired pay of \$17,379 in 2009.³

After retiring from the military, Applicant's employment history has been sporadic, to include periods of unemployment and underemployment. He worked for a series of contractors from May 1998 to April 2001. He was then underemployed as a cashier for about a year. He was unemployed from April 2002 to April 2004. He was then underemployed as a school custodian from April 2004 to July 2006, when he was unemployed again until November 2006. He then worked a series of jobs as a shuttle driver and security officer from November 2006 to May 2008. He began his current employment as an instructor for a defense contractor in May 2008. He reports an annual income of \$59,000 for this job.

Applicant has a history of financial problems, which he does not dispute, for the last ten years.⁴ He attributes his financial problems to two main causes. First, he points to his then spouse who neglected bill-paying responsibilities when he was working overseas. He returned from overseas in about 2000,⁵ and he then learned his wife had spent money on other matters. This circumstance led to their divorce. Second, Applicant went through a period of heavy drinking (e.g., as much as a pint of vodka daily) that resulted in financial problems as well. Applicant is now sober, and he has been so since about November 2006.

The SOR alleges 12 delinquent debts with various creditors for a total of about \$16,000, and his debts are established by the evidence.⁶ One of the debts is an unpaid judgment, several are medical debts in collection, and the others are consumer debts.

² Exhibit F.

³ Exhibit L.

⁴ Tr. 70.

⁵ Tr. 47–48.

⁶ Exhibits 1–7.

In his answer to the SOR, Applicant admitted all the debts except for six that he claimed were paid. As far as can be determined, he did not present documentary proof-of-payment for any of the debts in the SOR.

Applicant presented documentary proof-of-payment for debts not in the SOR as follows: (1) a \$71 medical collection account;⁷ (2) a credit account placed for collection;⁸ and (3) a wireless account placed for collection.⁹ In addition, he presented documentary proof of the following: (1) he is disputing two accounts;¹⁰ he is making \$171 monthly payments on a government debt (AAFES) via involuntary deduction from his military retiree pay;¹¹ and he is making payments on a bank credit line (similar to a credit card).¹²

Applicant has little money in the bank, had but \$5 in savings, and is living paycheck-to-paycheck.¹³ His bank account statement confirms these circumstances, as it shows an account balance of \$107 as of February 11, 2010.¹⁴ The statement also shows year-to-date overdraft fees of \$32. Moreover, according to his budget, he spends \$490 monthly on cigarettes and alcohol.¹⁵ He denies drinking alcohol, and he explained that his now ex-wife mistakenly wrote alcohol on the document.¹⁶

The best evidence of Applicant's financial situation is likely a September 2009 credit report presented by Applicant.¹⁷ In addition to the unpaid judgment for \$673, the credit report reflects 11 adverse accounts, one of which was a past-due installment loan, and one of which is a paid \$71 medical collection account. The other nine collection or charged-off accounts have a combined balance of about \$4,293, for a total of \$4,966 when added to the unpaid judgment. The installment loan is noteworthy because the credit report shows Applicant obtained the loan to buy a vehicle for about \$26,000 in November 2007. The term of the loan is for 72 months with a monthly

⁷ Exhibit B at 2 of 7.

⁸ Exhibits J and O.

⁹ Exhibit K

¹⁰ Exhibit E.

¹¹ Exhibits F and I.

¹² Exhibit N.

¹³ Tr. 83.

¹⁴ Exhibit M.

¹⁵ Exhibit A.

¹⁶ Tr. 81.

¹⁷ Exhibit B.

payment of \$563, and Applicant has been 30 days past-due on the loan four times, although the loan is now current and in good standing.

After the hearing, Applicant obtained the services of a consumer law firm to help him work with the credit bureaus to audit and verify the status of his credit reports.¹⁸ There is no information available on what results, if any, were obtained.

Applicant presented two letters of reference, one from a supervisor and the other from a coworker.¹⁹ Both individuals vouch for Applicant and recommend him for a security clearance.

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.²⁰ 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.”²¹ 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.²² An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁴ The Government has the burden of presenting

¹⁸ Exhibit D.

¹⁹ Exhibits G and H.

²⁰ *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).

²¹ 484 U.S. at 531.

²² Directive, ¶ 3.2.

²³ Directive, ¶ 3.2.

²⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

evidence to establish facts alleged in the SOR that have been controverted.²⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁷ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁸ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁹

The Adjudicative Guidelines set forth the relevant standards 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.³⁰ 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,³¹ 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

²⁵ Directive, Enclosure 3, ¶ E3.1.14.

²⁶ Directive, Enclosure 3, ¶ E3.1.15.

²⁷ Directive, Enclosure 3, ¶ E3.1.15.

²⁸ *Egan*, 484 U.S. at 531.

²⁹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

³⁰ Executive Order 10865, § 7.

³¹ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

questions about an individual's reliability, trustworthiness, and ability to protect classified information.³²

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. This history raises concerns because it indicates inability or unwillingness to satisfy debts³³ and a history of not meeting financial obligations³⁴ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions. In addition, a third disqualifying condition applies because the evidence shows his financial problems were linked to his alcoholism, although he has been sober since late 2006.³⁵

Under Guideline F, there are six conditions that may mitigate security concerns:³⁶

(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

³² AG ¶ 18.

³³ AG ¶ 19(a).

³⁴ AG ¶ 19(c).

³⁵ AG ¶ 19(f).

³⁶ AG ¶ 20 (a) – (f) (setting forth six mitigating conditions).

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 most pertinent here are subparagraphs (b) and (d) based on Applicant's divorce, the periods of unemployment and underemployment, and his efforts to repay. But the credit in mitigation is insufficient to overcome the security concerns. The evidence shows Applicant has done little to repay, settle, or otherwise resolve the debts at issue in the SOR. Given his longstanding history of indebtedness, his decision to take on a \$563 monthly car payment in late 2007 is inexplicable. The evidence also shows that his financial problems are ongoing and likely to continue. He does not have firm control or a comprehensive knowledge of his indebtedness. He has not established a track record of repayment that could be used to measure the likelihood that he will successfully resolve his indebtedness in the near future. Although Applicant is sincere and genuinely wants to take care of his delinquent debts, the record is insufficient to make any safe predictive judgments that Applicant will put his financial house in good order anytime soon.

To conclude, the facts and circumstances surrounding Applicant's ongoing financial problems justify current doubts about his judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent standard, these doubts are resolved in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept³⁷ and Applicant's favorable evidence. Nevertheless, 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.l:	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

³⁷ AG ¶ 2(a)(1) – (9).