



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-02345
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Michael Lyles, Esq., Department Counsel
For Applicant: Eugene K. Polk, Esq.

April 5, 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. He attributes the financial problems to periods of unemployment and underemployment during late 2001 to mid-2004. He has been working as a software engineer, his career field, since mid-2004 earning at least \$50,000 annually, and his current annual salary is about \$80,000. He married for the first time in 2008. Applicant has made 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 history of financial problems. 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 August 28, 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 October 19, 2009. The hearing took place November 18, 2009. The hearing 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 46-year-old employee of a federal contractor. He is presently employed as a software engineer, and he earns an annual salary of about \$80,000. He married for the first time in 2008. There are no minor children living in his household. His employment history includes active duty military service in the U.S. Air Force, when he held a security clearance. His employment history also includes periods of unemployment and underemployment.

Applicant worked continuously as a software engineer from about 1995 until about December 2001, when he was laid off by his then employer. As a result, he was unemployed for the next year. He worked again as a software engineer for about four months in early 2003. He was then unemployed during June 2003 to October 2003, a period of about five months. Frustrated and unable to find steady employment as a software engineer, Applicant worked jobs at a fast-food restaurant and a department store from November 2003 to May 2004. He resumed working as a software engineer in June 2004, and he has earned at least \$50,000 annually since then.

Applicant has a history of financial problems (delinquent consumer debt), which he does not dispute. He attributes his financial problems to periods of unemployment and underemployment. He used credit cards during this time to meet his financial

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. They replace the guidelines published in Enclosure 2 to the Directive.

obligations and living expenses. As a result, he incurred more credit card debt than he was able to repay.

The SOR alleges 12 delinquent debts with various creditors for a total of approximately \$65,000. Most remain unpaid and delinquent, but Applicant has made progress in resolving some of the debts. The current status of the debts is summarized in the table below.

<i>SOR Allegation</i>	<i>Current Status</i>
¶ 1.a—delinquent debt of \$1,869.	Collection account with balance of \$1,869; in a repayment plan of \$150 monthly beginning Sep. 2009. (Exhibit G)
¶ 1.b—delinquent debt of \$4,732.	Collection account with balance of \$4,469; in a repayment plan of \$100 monthly beginning Aug. 2009. (Exhibits B and H)
¶ 1.c—delinquent debt of \$8,662.	Collection account with balance of \$8,430; in a repayment plan of \$100 monthly beginning Aug. 2009. (Exhibits A and I)
¶ 1.d—delinquent debt of \$3,439.	Duplication of debt in ¶ 1.a. (Tr. 45–47)
¶¶ 1.e–1.g—delinquent debts of \$14,857, \$3,503, and \$2,390 to same creditor.	Resolved; two accounts do not appear in an Oct. 2009 credit report; the third for \$3,503 appears in the report as a closed account with a zero balance; and Applicant has two other accounts with same creditor in good standing. (Exhibit E; Tr. 47–51)
¶ 1.h—delinquent debt of \$1,312.	In settlement for \$659 in six payments over six months beginning Jun. 2009; made five payments as of Oct. 2009. (Exhibits D and F)
¶ 1.i—delinquent debt of \$741.	Unpaid collection account. This debt concerns account number 517800702637. (Exhibit 5) Applicant’s proof of payment is for account number 5433628751301197, which is in good standing. (Exhibit E; Tr. 53)

¶ 1.j—delinquent debt of \$5,754.	Unresolved collection account. It appears in a Jan. 2009 credit report, but not in an Oct. 2009 credit report. (Exhibits 5 and E; Tr. 54)
¶ 1.k—delinquent debt of \$13,651.	Collection account with balance of \$13,631; in a repayment plan of \$100 monthly beginning Sep. 2009. (Exhibit C)
¶ 1.l—delinquent debt of \$4,903.	Unresolved collection account. It appears in a Jan. 2009 credit report, but not in an Oct. 2009 credit report (Exhibits 5 and E; Tr. 56–58)

To sum up, five accounts are resolved and seven remain outstanding. Applicant paid, settled, or otherwise resolved the debts in SOR ¶¶ 1.e, 1.f, 1.g, and 1.h, and the debt in ¶ 1.d is a duplicate. (A good part of this debt was resolved by accounts dropping off credit reports.) The debts in ¶¶ 1.a, 1.b, 1.c, and 1.k are collection accounts in repayment plans. He began the repayment plans in August and September 2009, and the total balance due on these four debts is approximately \$28,000. For the debts in ¶¶ 1.i, 1.j, and 1.l, two are unresolved collection accounts and one is an unpaid collection account for a total balance due of approximately \$11,000. In total, Applicant has approximately \$39,000 in delinquent debt he has yet to resolve.

It appears Applicant and his wife are currently living within their means. His wife is employed outside the home. She is earning about \$20,000 annually. His financial assets consist of approximately \$1,000 in a savings account, \$500 in a checking account, and \$4,500 in a retirement account.²

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.³ 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.”⁴ Under *Egan*, Executive Order 10865, and the Directive,

² Tr. 94.

³ *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).

⁴ 484 U.S. at 531.

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.⁵ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁶

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁷ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁰ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹¹ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹²

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

⁵ Directive, ¶ 3.2.

⁶ Directive, ¶ 3.2.

⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁸ Directive, Enclosure 3, ¶ E3.1.14.

⁹ Directive, Enclosure 3, ¶ E3.1.15.

¹⁰ Directive, Enclosure 3, ¶ E3.1.15.

¹¹ *Egan*, 484 U.S. at 531.

¹² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

of an applicant's loyalty.¹³ 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,¹⁴ 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.¹⁵

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 \$39,000 in delinquent debt that he is now facing. This history raises concerns because it indicates inability or unwillingness to satisfy debts¹⁶ and a history of not meeting financial obligations¹⁷ within the meaning of Guideline F. The facts are more than sufficient to establish these two disqualifying conditions, and they suggest some financial irresponsibility as well.

Under Guideline F, there are six conditions that may mitigate security concerns.¹⁸ 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;

¹³ Executive Order 10865, § 7.

¹⁴ AG, ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁵ AG, ¶ 18.

¹⁶ AG, ¶ 19(a).

¹⁷ AG, ¶ 19(c).

¹⁸ AG, ¶ 20 (a) – (f) (setting forth six mitigating conditions).

(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 evidence supports a conclusion that both ¶¶ 20(b) and 20(d) apply in mitigation. It is apparent that Applicant's financial problems stem from periods of unemployment and underemployment. These were circumstances largely beyond his control and he did not act irresponsibly during his period; instead, he did the best he could under difficult circumstances. Applicant also receives credit for his efforts to address his financial problems.

Although he presented evidence in mitigation, the credit in mitigation is insufficient to overcome the security concerns. His financial problems date to the period of late 2001 to mid-2004, which is now several years ago. He has worked as a software engineer since June 2004, earning at least \$50,000 annually since then. Despite working full-time for more than five years, he has made little progress in resolving his financial problems. For example, the four debts in repayment plans are recent developments, beginning in August and September 2009.

Looking forward, based on the more than \$39,000 in delinquent debt that Applicant is still facing and his sporadic payment record over the last five years, it is too soon to rule out the likelihood of additional financial problems. What is missing here is a well-established track record of repayment of his delinquent debts. Although he may have good intentions, his track record at this point is insufficient 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. 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 concept¹⁹ 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.b, 1.c:	Against Applicant
Subparagraphs 1.d, 1.e, 1.f, 1.g, 1.h:	For Applicant
Subparagraphs 1.i, 1.j, 1.k, 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

¹⁹ AG, ¶ 2(a)(1) – (9).