



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-03757
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Michael Lyles, Esq., Department Counsel
For Applicant: *Pro se*

June 28, 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 that are ongoing. He does not appear to have a firm grasp or command of his finances. It is too soon to tell if he will be able to make and maintain progress on repaying his delinquent debts. There is insufficient evidence to explain, extenuate, or mitigate the security concerns stemming from his 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 November 30, 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 February 2, 2010. The hearing took place April 7, 2010. The hearing transcript (Tr.) was received April 15, 2010.

The record was kept open until June 7, 2010, to provide an opportunity for Applicant to submit additional documentary evidence. He made a timely submission, and that document is admitted without objections.²

Findings of Fact

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

Applicant is a 64-year-old employee of a federal contractor. He is seeking to retain a security clearance at the current level. He is married, his wife is unemployed and now receiving Social Security disability benefits, and he has two adult children.

Applicant is employed as an aircraft mechanic supervisor working in the field of unmanned aerial targets. He has been continuously employed since at least 1978. His annual salary is now about \$69,000.³ His employment history includes honorable military service in the U.S. Navy during 1964–1967, to include service in Vietnam.

Applicant has a history of financial problems that he does not dispute. This history dates to approximately 1992, when he and his wife sought relief via a Chapter

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.

² Exhibit G; Applicant's Exhibits A–F were admitted during the hearing.

³ Tr. 42; Exhibit A.

13 bankruptcy case.⁴ Although they filed the necessary petition and related documents, they eventually decided not to pursue it and repaid their creditors directly. As a result, the Chapter 13 case was dismissed.

Applicant traces his current financial problems, set forth as delinquent debts in the SOR, to the use of credit cards and to his wife’s loss of employment due to medical problems.⁵ His wife had gastric bypass surgery in 2004. She was able to return to her job without undue delay. Beginning in late 2006 and continuing into 2007, she began to experience complications. In 2007, she had a procedure to address the complications. Thereafter, she was unable to return to work due to her medical condition.

Applicant’s wife applied for Social Security disability benefits, and her claim was eventually granted in about March 2010.⁶ Social Security determined that Applicant’s wife became disabled under their rules as of December 4, 2008, and was entitled to monthly disability benefits beginning June 2009. A lump-sum payment of \$8,370 was made in March 2010, and a regular monthly payment of \$930 began in April. Social Security has chosen Applicant as his wife’s representative payee due to concern about her ability to handle her finances.⁷

In addition to the 1992 Chapter 13 bankruptcy case, the SOR alleges and Applicant admits seven delinquent debts for a total of about \$44,000. Applicant used money from the lump-sum payment, money from selling unused vacation days, and an income tax refund to repay some of the debts.⁸ The debts in the SOR are summarized in the table below.

Debts	Status
SOR ¶ 1.a—\$17,768 collection account based on a credit card account.	Making \$400 monthly payments; balance of \$18,168 as of Sep. 2009. (Exhibit 2)
SOR ¶ 1.b—\$3,401 unpaid judgment based on a credit card account.	Paid in full (about \$5,300) in Mar. 2010. (Tr. 48–49, 72; Exhibit F)
SOR ¶ 1.c—\$60 collection account based on a medical bill.	Paid in full Mar. 2010. (Exhibit D)

⁴ Exhibit 5.

⁵ Exhibit 2.

⁶ Exhibit B.

⁷ Tr. 72–73.

⁸ Tr. 61–62.

SOR ¶ 1.d—\$4,800 charged-off account based on a credit card account.	Paid in full (\$3,000) in May 2010; account number 7351 (last four digits). (Exhibit G)
SOR ¶ 1.e—\$12,548 charged-off account based on a credit card account.	Unresolved; account number 6160 (last four digits).
SOR ¶ 1.f—\$5,201 collection account.	Same account as SOR ¶ 1.b. (Exhibit 2)
SOR ¶ 1.g—\$299 collection account based on a medical bill.	No longer liable; removed from collection. (Exhibit E)

One debt was found to be unresolved because Applicant did not produce sufficient documentary evidence to determine its status. Although the two debts in SOR ¶¶ 1.d and 1.e concern the same creditor, a major bank, the credit reports⁹ and other documentary evidence¹⁰ show that these were two separate credit card accounts opened with the same creditor. Indeed, when discussing these two accounts during his background investigation, Applicant explained that he and his wife used the credit cards to purchase various goods and services, to pay other bills, and for family travel and short vacations.¹¹ He also explained that it was during this time that he and his wife “went nuts” using credit cards.¹²

The most recent credit report, dated September 2009, discloses a credit score from one of the major credit reporting agencies. The score is 599, which is considered “very poor.”¹³

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.

⁹ Exhibits 3 and 4.

¹⁰ Exhibit 2.

¹¹ Exhibit 2.

¹² Exhibit 2 at 8.

¹³ Exhibit 3 at 15.

It is well-established law that no one has a right to a security clearance.¹⁴ 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.”¹⁵ 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.¹⁶ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁷

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁸ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁰ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²¹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²² The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²³

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.

¹⁴ *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).

¹⁵ 484 U.S. at 531.

¹⁶ Directive, ¶ 3.2.

¹⁷ Directive, ¶ 3.2.

¹⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁹ Directive, Enclosure 3, ¶ E3.1.14.

²⁰ Directive, Enclosure 3, ¶ E3.1.15.

²¹ Directive, Enclosure 3, ¶ E3.1.15.

²² *Egan*, 484 U.S. at 531.

²³ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.²⁴ 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,²⁵ 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.²⁶

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 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. In addition, the record supports a conclusion of consistent spending beyond Applicant's means.²⁹ This is indicated by the amount of indebtedness, the apparent misuse of credit cards, and the low credit score.

²⁴ Executive Order 10865, § 7.

²⁵ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁶ AG ¶ 18.

²⁷ AG ¶ 19(a).

²⁸ AG ¶ 19(c).

²⁹ AG ¶ 19(e).

Under Guideline F, there are six conditions that may mitigate security concerns:³⁰

(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.

Of those mitigating conditions, the most pertinent here are subparagraphs (b) and (d). Applicant deserves credit in mitigation based on his wife's medical problems that resulted in loss of employment and disability. These were circumstances beyond his control that hindered his ability to repay creditors. He also deserves credit for his good-faith efforts to resolve his indebtedness as shown in the table above. But the credit in mitigation is insufficient to overcome the security concerns. Applicant is facing a large amount of delinquent debt—two accounts for about \$30,000. He has not addressed one account (SOR ¶ 1.e) in any meaningful way. On the other account (SOR ¶ 1.a), the most recent payment information he provided is from September 2009. For a man of his age and maturity, he does not appear to have a firm grasp or command of his finances. Looking forward, it is too soon to tell if he will be able to make and maintain progress on repaying his delinquent debts. Although I am persuaded Applicant is sincere and genuinely wants to take care of his delinquent debts, the record is insufficient to make any safe predictive judgments.

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

³⁰ AG ¶ 20 (a) – (f).

resolved in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept³¹ 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b–1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f–1.g:	For 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

³¹ AG ¶ 2(a)(1) – (9).