



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



In the matter of:)
)
-----) ISCR Case No. 09-04400
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esq., Department Counsel
For Applicant: *Pro se*

August 6, 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 evidence shows Applicant has a history of financial problems, to include student loans in collection. He did not present sufficient documentary evidence to show (1) clear indications that his financial problems are resolved or under control; or (2) that he has initiated a good-faith effort to repay his delinquent debts. His ongoing financial problems justify current doubts about his judgment, reliability, and trustworthiness. 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 March 11, 2010, 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 April 22, 2010. The hearing took place June 1, 2010, but was continued, after Department Counsel had presented his case-in-chief, at Applicant's request to allow him to consult with or retain an attorney and for additional time to prepare. The hearing resumed 30 days later on July 1, 2010. Applicant elected to represent himself; he testified and offered a single documentary exhibit, Exhibit A, which was admitted. The hearing transcripts (Tr.) were received June 8, 2010, and July 12, 2010.

The record was kept open until July 20, 2010, to allow Applicant an opportunity to submit additional documentary evidence to prove that he paid, settled, or otherwise resolved the delinquent debts, to include the student loans.² To date, Applicant has not submitted additional matters.

Findings of Fact

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

Applicant is a 31-year-old employee of a federal contractor. He began his current employment as a network engineer in September 2008.³ He then worked two full-time jobs until he was laid off from his job as a mechanic in February 2010. As a network engineer, he earns an annual salary of about \$38,000, although he anticipates a substantial raise if he obtains a security clearance.

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 Tr. 76–82.

³ Exhibit G.

He is divorced and has two children from the marriage, ages 13 and 10. He pays child support of \$770 monthly, and he reports that he is current on that financial obligation. His educational background includes a high-school diploma, some basic military education, and technical college. He attended four quarters at the technical college to obtain the knowledge and skills necessary to change careers and find employment in the field of information technology (IT). He paid for the technical college with student loans.

Applicant's employment history includes four years of honorable military service in the U.S. Marine Corps during 1997–2001. Trained in motor transport, Applicant then went to work for a trucking company as a mechanic in October 2001, and he worked there until he was laid off several months ago. Overall, Applicant has worked on a full-time basis since 1997.

Applicant has a history of financial problems, which he does not dispute. He points to his divorce in 2005 as the primary cause of his financial problems, because his wife's irresponsible spending caused financial problems.⁴ In addition to losing his wife's income, Applicant is obligated to pay child support. His recent job loss is also a contributing factor.

The SOR alleged 11 debts in some form of delinquency. The debts consist of three medical debts in collection for \$495, four student loans in collection for \$11,618, three consumer credit accounts in collection for \$910, and one unpaid judgment for \$6,868, for a total of about \$19,891 in delinquent debt. Applicant addressed the debts in his hearing testimony, but he failed to present documentary evidence about the current status of the debts except for the judgment in SOR ¶ 1.c. Exhibit A shows the judgment was settled in full in February 2010, and no further funds are due the creditor.

Neither the SOR⁵ nor the Government's evidence (the credit reports)⁶ identified the creditors for the three medical debts. Likewise, the credit reports do not provide contact information that could aid in identifying and communicating with a creditor. In his hearing testimony, Applicant explained he was unable to identify or contact the creditors for the medical debts.

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

⁴ Tr. 12.

⁵ SOR ¶¶ 1.a, 1.f, and 1.g.

⁶ Exhibits 3 and 4.

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.⁷ 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.”⁸ 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.⁹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁴ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁵ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁶

The AG set forth the relevant standards to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions and mitigating conditions

⁷ *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).

⁸ 484 U.S. at 531.

⁹ Directive, ¶ 3.2.

¹⁰ Directive, ¶ 3.2.

¹¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹² Directive, Enclosure 3, ¶ E3.1.14.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ *Egan*, 484 U.S. at 531.

¹⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.¹⁷ 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,¹⁸ 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.¹⁹ 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.²⁰

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. Indeed, the practice of evaluating a person based on their record of financial responsibility (or lack thereof) is used in various industries. For example, the insurance industry uses credit-based insurance scores when determining insurance rates because the scores have been found to be effective in predicting future losses.

The evidence 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 debts²¹ and a history of not meeting financial obligations²² within

¹⁷ Executive Order 10865, § 7.

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

¹⁹ 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).

²⁰ AG ¶ 18.

²¹ AG ¶ 19(a).

²² AG ¶ 19(c).

the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions. But in reaching this conclusion, I did not give any weight to the three medical debts with unknown creditors. Given that the creditors are not identified by name, the SOR allegations for these three debts are not legally sufficient because they are not “as detailed and comprehensive as the national security permits.”²³

Under Guideline F, there are six conditions that may mitigate security concerns.²⁴

(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). Each is discussed below.

Applicant's attributes his financial problems to a problematic marriage due to a spendthrift spouse. Although that may be a circumstance beyond one's control, Applicant does not receive credit in mitigation because the divorce took place about five years ago, which is too far in the past to receive credit under subparagraph (b). By now, Applicant should have been able to overcome any financial setback stemming from the divorce. The recent job loss is not a decisive factor because Applicant incurred the delinquent debts before the job loss.

²³ Directive, Enclosure 3, ¶ E3.1.3.

²⁴ AG ¶ 20 (a) – (f).

In addition, Applicant has not initiated a good-faith effort to repay his overdue debts or otherwise resolve the debts. Other than settling the judgment, which was not insubstantial, Applicant failed to present reliable documentary evidence to prove that he paid, settled, or otherwise resolved the three consumer credit accounts in collection as well as the four student loans in collection. The delinquent student loans are especially troubling given the nature of the financial obligation.

Based on the evidence here, it is too soon to tell if Applicant is willing and able to conduct his financial affairs in a responsible manner. Applicant is facing a large amount of delinquent debt, primarily student loans, which he has done little to address. Such inaction militates against a favorable clearance decision because it raises doubts or questions about Applicant's judgment, reliability, and trustworthiness.

To conclude, following *Egan* and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept²⁵ 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.c, 1.f, 1.g:	For Applicant
Subparagraphs 1.b, 1.d, 1.e, 1.h–1.k:	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

²⁵ AG ¶ 2(a)(1) – (9).