



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



In the matter of:)
)
-----) ISCR Case No. 09-06433
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

January 21, 2011

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 evidence shows Applicant has a history of financial problems or difficulties, to include a Chapter 7 bankruptcy case in 2005. Most of his financial problems stem from uninsured medical expenses incurred for treatment of a serious disease, a circumstance beyond his control. In addition, given his limited means, he has made good-faith efforts to repay his delinquent debts. Accordingly, as explained below, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on March 2, 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 sets forth 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, but did not request a hearing. Subsequently, Department Counsel timely requested a hearing as permitted by the Directive.² The case was assigned to a judge on July 2, 2010. The case was reassigned to me September 7, 2010. The hearing took place September 15, 2010. The hearing transcript (Tr.) was received September 23, 2010.

The record was kept open until September 30, 2010, to allow Applicant to submit additional documentary information. Applicant made a timely submission and those matters are admitted without objections.³

Findings of Fact

Applicant is a 32-year-old information technology (IT) employee who is seeking a security clearance for the first time. He has a good employment record as verified by his deputy manager.⁴ His educational background includes a bachelor's degree in music. He married in 2001, and they have no children. His wife is employed in a healthcare field earning about \$11 hourly.⁵ Applicant has no other sources of income. As of September 2010, Applicant had about \$1,200 in checking and savings accounts.⁶ Other

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. 14–16; Appellate Exhibit I.

³ Exhibits N–R.

⁴ Exhibit R.

⁵ Exhibit N.

⁶ Exhibit R and S.

than retirement accounts at work (with small balances), they have no other financial accounts.

Applicant has a history of financial problems or difficulties, which he does not dispute.⁷ His history includes going through Chapter 7 bankruptcy proceedings in 2005, when he obtained a discharge of approximately \$100,000 in liabilities (SOR ¶ 1.a).⁸ He attributes the bankruptcy to uninsured medical expenses and youthful financial irresponsibility.⁹

Applicant explained he has been sick since the age of 12 with a disease that weakens the immune system, however, he reports that it appears to have left his system in about 2007.¹⁰ He is still under the care of a physician, but his medication is limited to the daily use of baby aspirin.

After the 2005 bankruptcy, Applicant was hospitalized for treatment and incurred a large amount of indebtedness he has been unable to pay due to a lack of health insurance and a lack of income. Tax records establish that Applicant had adjusted gross income of \$23,570 in 2006, \$30,884 in 2007, \$40,289 in 2008, and \$54,536 in 2009.¹¹ Also, his ability to repay delinquent debt was hindered in July 2010, when it was necessary to undertake an unexpected home repair costing \$2,700.¹² As shown by a written monthly budget, Applicant and his wife are not living a high-end or lavish lifestyle and are living within their means.¹³

Of the 29 delinquent debts alleged in the SOR, 25 debts are for uninsured medical expenses for a total amount of approximately \$122,000.¹⁴ The largest of those debts is a collection account for about \$104,000 stemming from the period of hospitalization (SOR ¶ 1.p).

The four remaining debts total less than \$2,500 (SOR ¶¶ 1.m, 1.n, 1.r, and 1.dd). The debt in ¶ 1.m was settled in full in March 2010.¹⁵ The debt in ¶ 1.n was settled in full

⁷ Answer; Exhibits 2–7.

⁸ Exhibits 2 and 7.

⁹ Tr. 86.

¹⁰ Tr. 36.

¹¹ Exhibits F, G, H, and I.

¹² Exhibit E.

¹³ Exhibit Q.

¹⁴ The medical debts alleged in SOR ¶¶ 1.c and 1.s, 1.d and 1.cc, and 1.e and 1.aa are duplicates.

¹⁵ Exhibits M and 2 at 13.

in December 2009.¹⁶ The debt in ¶ 1.r for a television service account in collection was included in Applicant's 2005 Chapter 7 bankruptcy.¹⁷ And the debt in ¶ 1.dd, a \$701 collection account, is unresolved.¹⁸

For the medical debts, Applicant paid or settled several of those accounts (SOR ¶¶ 1.b, 1.c, 1.d, 1.j, 1.s, 1.t, 1.u, 1.v, 1.w, 1.y, 1.z, 1.cc).¹⁹ He is making regular payments on one medical account (SOR ¶¶ 1.e and 1.aa).²⁰ The remaining medical debts, to include the more than \$100,000 collection account, are unresolved (SOR ¶¶ 1.f, 1.g, 1.h, 1.i, 1.k, 1.l, 1.o, 1.p, 1.q, 1.x, and 1.bb).

In addition, Applicant presented documentary proof that his student loans are in deferment, and that he paid a collection account not alleged in the SOR.²¹

Law and 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.

It is well-established law that no one has a right to a security clearance.²² 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."²³ 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.

¹⁶ Exhibit C.

¹⁷ Exhibit 7 at 3; Tr. 85.

¹⁸ Exhibit L at 2.

¹⁹ Answer to SOR; Exhibits D and L.

²⁰ Exhibit J.

²¹ Exhibits A, B, and 2.

²² *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).

²³ 484 U.S. at 531.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.²⁴ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³⁰ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.³¹

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.

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.³² Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

²⁴ Directive, ¶ 3.2.

²⁵ Directive, ¶ 3.2.

²⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁷ Directive, Enclosure 3, ¶ E3.1.14.

²⁸ Directive, Enclosure 3, ¶ E3.1.15.

²⁹ Directive, Enclosure 3, ¶ E3.1.15.

³⁰ *Egan*, 484 U.S. at 531.

³¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

³² Executive Order 10865, § 7.

Analysis

Under Guideline F for financial considerations,³³ 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.³⁴ The overall concern under Guideline F is:

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.³⁵

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.

The evidence here supports a conclusion that Applicant has a history of financial problems or difficulties. This raises security concerns because it indicates inability or unwillingness to satisfy debts³⁶ and a history of not meeting financial obligations³⁷ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions.

Under Guideline F, there are six conditions that may mitigate security concerns:³⁸

¶ 20(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;

¶ 20(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;

³³ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

³⁴ 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).

³⁵ AG ¶ 18.

³⁶ AG ¶ 19(a).

³⁷ AG ¶ 19(c).

³⁸ AG ¶ 20 (a) – (f).

¶ 20(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;

¶ 20(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

¶ 20(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

¶ 20(f) The affluence resulted from a legal source of income.

Of those mitigating conditions, the most pertinent are ¶¶ 20(b) and 20(d). Applicant has initiated a good-faith effort to repay his delinquent debts as shown by resolving many of the medical debts as well as settling two of the three non-medical debts. In addition, it is evident that Applicant would have only experienced minor financial problems but for his medical condition that caused him to incur more than \$100,000 in uninsured medical expenses. These circumstances are not indicative of poor self-control, lack of judgment, unwillingness to abide by rules and regulations, and they are not indicative of apathy, negligence, or irresponsibility. He has acted responsibly under the circumstances by repaying several of the delinquent debts.

Sometimes bad things happen to good people, and I am persuaded that is the situation here. This is not a case of an applicant consistently spending beyond his means to finance a high-end lifestyle or standard of living. Likewise, this is not a case of an applicant ignoring his financial obligations or attempting to evade his creditors. Also, I am persuaded that Applicant is, within his means, endeavoring to repay his delinquent debts. Although a large amount of uninsured medical debt is still unresolved, it does not raise doubts or questions about his judgment, reliability, and trustworthiness in light of the facts and circumstances surrounding his financial problems.

To conclude, Applicant has acted reasonably and responsibly under the circumstances, and I have no doubts or concerns about his security suitability or fitness. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for Applicant.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a–1.dd: For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge