



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



In the matter of:)
)
-----) ISCR Case No. 09-07401
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

January 7, 2011

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 or difficulties, which are ongoing. Applicant has nine delinquent debts totaling about \$66,000, for which he has made little progress on resolving. Applicant did not present sufficient evidence to 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 March 15, 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 and requested a hearing. The case was assigned to a judge on August 5, 2010. The case was reassigned to me September 7, 2010. The hearing took place September 17, 2010. The hearing transcript (Tr.) was received September 28, 2010.

Findings of Fact

Applicant is a 56-year-old employee of a federal contractor. His educational background includes an associate's degree. He has been married and divorced twice. He has two adult children who live independently from him. He is now living with a woman whom he considers his common-law wife.

Applicant's employment history includes honorable military service in the U.S. Air Force. He served on active duty for about ten years during 1974–1984. He has since worked as an electronics technician, and he has worked for his current employer since November 2008. He previously worked for his current employer during 1998–2003. He then continued in the same job at the same location, but with a different employer until April 2006, when he was laid off.² He was then unemployed until November 2008, although he had two short-term jobs during this period of unemployment. He worked as a handyman for two to three months in 2007, and he worked as a quality-assurance inspector for a month or two in 2008.

Applicant has a history of financial problems or difficulties, which are ongoing. The SOR alleges 11 delinquent debts ranging from \$406 to \$27,460 for a total of more than \$80,000. In his Answer to the SOR, he denied all 11 debts contending that the information on the credit report was wrong. To that end, he filed a letter of dispute with

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. 55.

each of the three major credit bureaus in April 2010, although he has not received a reply.³

In his hearing testimony, however, Applicant did not deny responsibility for the majority of the debts, but he may have disputed the amount owed. The best evidence on the debts appears to be credit reports presented by Applicant, the first dated April 2010, and the second dated September 2010.⁴ The following table addresses the status of the 11 debts alleged in the SOR:

<i>Delinquent Debt</i>	<i>Current Status</i>
SOR ¶ 1.a—unpaid judgment for \$1,238.	Unpaid with balance of \$1,238. (Exhibits A and H)
SOR ¶ 1.b—unpaid judgment for \$1,000.	Subject to garnishment in past; balance of \$1,858 as of June 2010. (Exhibits A, C, D, and H)
SOR ¶ 1.c—unpaid judgment for \$5,409.	Balance of \$6,494 as of August 2010. (Exhibits A, E, and H)
SOR ¶ 1.d—collection account for \$886.	Unpaid with balance of \$909. (Exhibits A at 4 and H at 17)
SOR ¶ 1.e—collection account for \$810.	Unpaid with balance of \$810. (Exhibit A at 4)
SOR ¶ 1.f—collection account for \$1,509.	Unpaid with balance of \$1,559. (Exhibit A at 4 and Exhibit H at 17)
SOR ¶ 1.g—student loan in collection for \$27,460.	No payments on student loan since 2006. Balance is now \$28,386. (Exhibit A at 3 and Exhibit H at 7)
SOR ¶ 1.h—charged-off account for \$406.	Stems from a returned check; unpaid. (Exhibit A at 1 and Exhibit H at 19)
SOR ¶ 1.i—charged-off account for \$24,484.	Stems from a second mortgage on house that foreclosed; unpaid (Exhibit A at 1 and Exhibit H at 8)
SOR ¶ 1.j—collection account for \$769.	Unknown.
SOR ¶ 1.k—student loan in collection for \$17,069.	Same as SOR ¶ 1.g

³ Exhibit B.

⁴ Exhibits A and H.

In summary, Applicant has nine delinquent debts for a total of about \$66,000.

In about April 2010, Applicant retained a firm to assist him in restoring and rebuilding his credit history.⁵ Other than a letter briefly describing the firm's services, Applicant did not present any paperwork from the firm showing their actions, progress, and results, if any.

In addition to the debts in the SOR, Applicant owes the IRS about \$3,000 in back taxes incurred when he liquidated a 401(k) account during his period of unemployment.⁶ He believes the debt is for tax year 2006, and he received notice of the indebtedness in 2008. He reported that he has sent the IRS a \$50 check monthly beginning in about January 2009, although he presented no paperwork to this effect.

Applicant attributes his financial problems to his unemployment during 2006–2008. He survived during this period by relying on unemployment compensation and the proceeds of his 401(k) account. He reports having about \$600 cash in bank accounts, but no other accounts or financial assets.⁷

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.⁸ 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.”⁹ 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.

⁵ Exhibit G.

⁶ Tr. 78–84.

⁷ Tr. 100–104.

⁸ *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).

⁹ 484 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.¹⁰ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹¹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹² The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹³ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁴ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁵ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁶ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁷

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.¹⁸ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

¹⁰ Directive, ¶ 3.2.

¹¹ Directive, ¶ 3.2.

¹² ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹³ Directive, Enclosure 3, ¶ E3.1.14.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

¹⁶ *Egan*, 484 U.S. at 531.

¹⁷ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁸ Executive Order 10865, § 7.

Analysis

Under Guideline F for financial considerations,¹⁹ 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.²⁰ 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.²¹

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 debts²² and a history of not meeting financial obligations²³ 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:²⁴

¶ 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;

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

²⁰ 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).

²¹ AG ¶ 18.

²² AG ¶ 19(a).

²³ AG ¶ 19(c).

²⁴ 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 is ¶ 20(b). Applicant receives credit in mitigation under ¶ 20(b), because his unemployment during 2006–2008 was a circumstance largely beyond his control. The credit in mitigation should be weighed against the efforts and progress, if any, made by Applicant once he resumed full-time employment in his chosen career in November 2008, nearly two years ago before the record closed.

Since returning to work in 2008, Applicant has not acted reasonably and responsibly under the circumstances. As revealed by the table above, he has made little effort and progress in repaying, settling, or otherwise resolving his delinquent debts during the last two years. There are not clear indications that his financial problems are being resolved or are under control, as the evidence suggests the opposite. And it does not appear he has the financial means to resolve the small mountain (about \$66,000) of delinquent debt he is facing. Looking forward, it is most probable that he will not resolve this situation in the near future, and his financial problems will continue or recur.

To conclude, the evidence as a whole justifies current doubts about Applicant's judgment, reliability, and trustworthiness. 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. At this point, Applicant's suitability or fitness for a security clearance is a work in progress. Time will tell if Applicant has both the ability and willingness to clean up his financial house. This case is decided against Applicant.

²⁵ AG ¶ 2(a)(1)–(9).

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.i:	Against Applicant
Subparagraphs 1.j and 1.k:	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