



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



In the matter of:)
)
-----) ISCR Case No. 09-07805
)
Applicant for Security Clearance)

Appearances

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

April 15, 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 he has a history of financial problems or difficulties, which are unresolved. He has been unable to make any payments on his delinquent debts, although he intends to begin a repayment plan soon. Applicant did not present sufficient evidence to rebut, 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 12, 2010, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining that it was not 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.

Applicant answered the SOR and requested a hearing. The case was assigned to me October 2, 2010. The hearing took place November 17, 2010. The transcript (Tr.) was received November 29, 2010.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the delinquent indebtedness alleged, and his admissions are incorporated herein. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 37-year-old employee of a federal contractor. He is married and has two minor children. His educational background includes an associate's degree in electrical engineering, which he completed in 2007. He has worked as an electrical designer for his current employer since January 2008. He anticipates continuing his education in the field of electrical engineering at his company's expense. This is the first time he has applied for a security clearance to work in the defense industry.²

Applicant's employment history includes four years of active duty military service in the U.S. Navy. He was trained as an electrician and then work aboard a ship in that capacity. Since his honorable discharge from the Navy in 1998, he has held full-time employment as an electrician for two different companies. He worked for the second company for about ten years until beginning his current position. To do so, he and his wife and two children relocated, at company expense, to their current location, which is near his wife's family.

Applicant's wife's employment history has not been as steady as her husband. In 1999, she was diagnosed with lupus. Before that, she had worked on a full-time basis. She became very ill at one point, forcing her to leave employment, and she continues to

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 contained in Enclosure 2 to the Directive.

² Exhibit 1.

receive treatment to this day. She returned to work as a receptionist in late 2000 or 2001, but was laid off from that job in 2002. She then decided to focus on school, as she had previously started pursuing an associate's degree in 2001. Thereafter, she and Applicant had their first child in 2003, and the second followed in 2005. She finished her associate's degree in 2007. Once the family relocated in January 2008, she found a part-time waitress job that allowed her to work at night and care for their children during the day. She held that job until about September 2010, and she is now receiving unemployment compensation. Applicant believes she was laid off because she was slow and could not keep up the fast pace due to her medical condition.³

The SOR alleges delinquent indebtedness ranging in amounts from \$60 to \$5,176 for a total of about \$17,332. The delinquent debts consist of collection accounts, charged-off accounts, and an unpaid judgment. In addition to his admissions, the delinquent debts are established by the documentary evidence.⁴ To date, Applicant has been unable to make any payments on these debts. He and his wife considered bankruptcy in the 2007–2008 period and sought the advice of a bankruptcy attorney. Ultimately, they decided not to pursue bankruptcy because they considered it unethical. They also obtained advice and counseling from a nonprofit entity.⁵ After the second counseling session in November 2010, their financial counselor believed Applicant and his wife were in a position to make reasonable payments toward their delinquent debts beginning in December 2010. And that is the course of action Applicant intends to pursue.

Applicant has no other sources of income other than his employment and his wife's unemployment compensation. He has no money in the bank, investment accounts, or other financial reserves.

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.

³ Tr. 76.

⁴ Exhibits 3, 4, 5, and 6.

⁵ Exhibits A, B, and C.

It is well-established law that no one has a right to a security clearance.⁶ 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.”⁷ 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.⁸ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁰ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹¹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹² In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹³ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁴ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁵

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.

⁶ *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).

⁷ 484 U.S. at 531.

⁸ Directive, ¶ 3.2.

⁹ Directive, ¶ 3.2.

¹⁰ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹¹ Directive, Enclosure 3, ¶ E3.1.14.

¹² Directive, Enclosure 3, ¶ E3.1.15.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ *Egan*, 484 U.S. at 531.

¹⁵ 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.¹⁶ 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,¹⁷ 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.¹⁸ 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.¹⁹

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 debts²⁰ and a history of not meeting financial obligations²¹ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions.

There are six mitigating conditions to consider under Guideline F.²² Any of the following may mitigate security concerns:

¹⁶ Executive Order 10865, § 7.

¹⁷ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁸ 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).

¹⁹ AG ¶ 18.

²⁰ AG ¶ 19(a).

²¹ AG ¶ 19(c).

²² AG ¶ 20 (a)–(f).

¶ 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;

¶ 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; or

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

Of those mitigating conditions, the most pertinent are ¶¶ 20(b), 20(c), and 20(d). I have considered these three mitigating conditions in light of the record evidence as a whole, and none, individually or in combination, is sufficient to rebut, explain, extenuate, or mitigate the security concerns stemming from Applicant's history of financial problems or difficulties.

Applicant has experienced life events that were largely beyond his control and were factors in his financial problems. His wife's illness and periodic unemployment clearly fall into this category. Still, he is facing a small mountain of delinquent debt, which he is just beginning to address. His promise or intention to make payments in the future, although a circumstance that receives consideration, is not the same as a track record of payments. At this juncture, it is too soon to tell if he will be able to address his delinquent indebtedness in a meaningful or realistic way. Looking forward, based on his history of unresolved financial problems, it is most probable that he will not resolve this situation in the near future, and that 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 concept²³ and Applicant's

²³ AG ¶ 2(a)(1)–(9).

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.m:	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