



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-08269
)
Applicant for Security Clearance)

Appearances

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

April 21, 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, to include back taxes and a Chapter 13 bankruptcy case that ended in a dismissal as opposed to a discharge. Other than the bankruptcy payments, he has not made any progress toward resolving approximately \$50,000 in delinquent debts. 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 June 29, 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 7, 2010. The hearing took place November 15, 2010. The transcript (Tr.) was received November 23, 2010.

At the close of evidence, I held the record open until December 6, 2010, to allow Applicant to present documentary evidence, as he did not do so during the hearing. His post-hearing submission, consisting of 21 pages of various matters, is admitted without objections as Exhibit A.

Findings of Fact

Applicant's responses to the SOR were mixed and included some admissions and explanations. His admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 50-year-old employee of a federal contractor. He is seeking to retain a security clearance previously granted to him by the Defense Department.²

Applicant married in 1991, he and his wife have lived apart from each other since 1997, and they have not yet divorced. He has a child born in 2001 from another relationship. He pays child support on a monthly basis, and he submitted documentary evidence showing regular payments for a number of years.³ He has worked as a marine electrician for a federal contractor since at least 2000. More recently in 2009, his company selected him as one of the first participants in an apprentice program designed to encourage employees to explore a range of academic and on-the-job

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 Tr. at 53; Exhibit 1.

³ Exhibit A at 16–19.

training opportunities.⁴ His educational background includes a bachelor's degree in business administration and two associate's degrees.⁵ He also obtained three certificates of study in the subject of information technology.⁶

Applicant's employment history includes active duty military service in the U.S. Navy.⁷ He was discharged after about 15 years of honorable service in 1996, when he received about \$10,000 in separation pay.⁸ The Department of Veterans Affairs has determined that Applicant is entitled to compensation for a service-connected disability rated at 30 percent or more.⁹ As a result, he receives monthly compensation of \$644. He held a security clearance (issued by the Navy) during some of his military service without a negative incident. He was discharged at the pay grade of E-5; his rate was petty officer second class; and his rating was electrician's mate.

Applicant has a history of financial problems or difficulties, which are ongoing.¹⁰ His problematic financial history dates back to at least 2005, when he sought relief via a Chapter 13 bankruptcy case.¹¹ (SOR ¶ 1.j) The bankruptcy court confirmed or approved a repayment plan for Applicant's creditors in April 2006, and thereafter Applicant made monthly payments until sometime in 2008. The court dismissed the case in July 2008 on Applicant's motion because he was no longer able to make the required payments. He testified that his wages were reduced in 2007 or 2008, when his then employer was purchased by his current employer.¹² At the closing of his Chapter 13 case in December 2008, bankruptcy court records showed the following: (1) Applicant paid about \$25,635 into the repayment plan; (2) 20 creditors had no balance due; and (3) 17 creditors had a total balance due of about \$28,000.¹³ (SOR ¶ 1.k) In addition, the records showed a debt of \$5,699 owed to the IRS had no balance due, and a debt of \$1,644 owed to the IRS had a balance due of \$1,221. To date, he has not paid any of the outstanding debts owed to the 17 bankruptcy creditors.¹⁴

⁴ Exhibit A at 9.

⁵ Exhibit A at 10–12.

⁶ Exhibit A at 13–15.

⁷ Exhibit A at 3–8.

⁸ Exhibit A at 3.

⁹ Exhibit A at 2.

¹⁰ Exhibits 2, 3, 4, and 5.

¹¹ Exhibit 6.

¹² Tr. 83–85.

¹³ Exhibit 6.

¹⁴ Tr. 86.

In addition to the bankruptcy case, the SOR alleged nine delinquent debts in amounts ranging from \$445 to \$8,020 for a total of about \$23,771. (SOR ¶¶ 1.a–1.i) Those debts consist of state and federal tax liens, two unpaid judgments, and five collection accounts.

Concerning the tax debts, state and federal tax authorities began the garnishment of Applicant's pay in 2009; the state tax lien was in the amount of \$4,050; the federal tax lien was in the amount of \$5,261.¹⁵ He attributed the back taxes to accounting issues stemming from a home-based business he once operated. He presented a copy of a tax refund check, dated November 23, 2010, for \$8.68, which suggests but does not affirmatively establish that the back taxes owed to the state are paid.¹⁶ He did not present any documentary evidence concerning the back taxes owed to the IRS. He testified that he made his last payment to the IRS sometime in 2008 or 2009, but he did not present proof of that payment.¹⁷

Concerning the unpaid judgments, a \$1,965 judgment filed in September 2002,¹⁸ and a \$4,549 judgment filed in October 2006 remain unpaid.¹⁹ (SOR ¶¶ 1.e and 1.f) These two judgments were part of a series of lawsuits brought by Applicant's former landlord due to Applicant's failure to pay rent.²⁰ Applicant satisfied three other judgments obtained by the landlord, and one case ended in a dismissal.²¹ A \$841 judgment filed in May 2002 remains unsatisfied as well.²²

The five collection accounts, for a total of about \$5,457, are unresolved. (SOR ¶¶ 1.b, 1.c, 1.d, 1.g, and 1.h) Applicant testified that he does not have sufficient funds to repay the collection accounts or any of the other unresolved delinquent debts.²³ Likewise, he testified that he does not have any financial assets to draw upon in order to make payments on the delinquent debts.²⁴

¹⁵ Exhibits 14 and 15.

¹⁶ Exhibit A at 21.

¹⁷ Tr. 66.

¹⁸ Exhibit 5 at 3. Contrary to Applicant's hearing testimony, Exhibit 8 is not proof of payment for this judgment, but it is proof of dismissal for a case brought in 2001, which is not alleged in the SOR.

¹⁹ Exhibit 5 at 3; Exhibit 12.

²⁰ Exhibits 7–12.

²¹ Exhibits 7, 8, 9, and 11.

²² Exhibit 10.

²³ Tr. 89.

²⁴ Tr. 94–95.

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.²⁵ 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.”²⁶ 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.²⁷ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁸

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³⁰ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³¹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³² In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³³

²⁵ *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).

²⁶ 484 U.S. at 531.

²⁷ Directive, ¶ 3.2.

²⁸ Directive, ¶ 3.2.

²⁹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³⁰ Directive, Enclosure 3, ¶ E3.1.14.

³¹ Directive, Enclosure 3, ¶ E3.1.15.

³² Directive, Enclosure 3, ¶ E3.1.15.

³³ *Egan*, 484 U.S. at 531.

The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.³⁴

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.³⁵ 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,³⁶ 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.³⁷ 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.³⁸

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

³⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

³⁵ Executive Order 10865, § 7.

³⁶ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

³⁷ 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).

³⁸ AG ¶ 18.

unwillingness to satisfy debts³⁹ and a history of not meeting financial obligations⁴⁰ 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.⁴¹ Any of the following may mitigate security concerns:

¶ 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) and 20(d). I have considered these mitigating conditions in light of the 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's reduction in wages in 2007 or 2008 was a circumstance largely beyond his control and no doubt played a part in his financial problems. Previously in 2005, he took action via the Chapter 13 bankruptcy case to resolve his delinquent debts. He was about in the middle of the court-approved repayment plan when he had

³⁹ AG ¶ 19(a).

⁴⁰ AG ¶ 19(c).

⁴¹ AG ¶ 20 (a)–(f).

the bankruptcy case dismissed due to his reduction in wages and inability to make the requirement payment. His cumulative payment of about \$25,000 into the Chapter 13 plan receives favorable consideration because it shows a good-faith effort. But what is missing here is evidence of a good-faith effort to resolve his delinquencies since dismissal of the bankruptcy case in 2008. It appears Applicant now has a total of about \$50,000 in delinquent debts. He does not have a realistic plan, has not taken any substantial action, and does not have sufficient means to address his delinquencies. Of particular concern is the federal tax debt. Applicant did not present any documentary evidence to show the debt's current status or his efforts to resolve it. In general, Applicant's case in mitigation suffers from a lack of documentary evidence showing his efforts to resolve the financial matters at issue.

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 concept⁴² and Applicant's favorable evidence, to include his honorable military service and his status as a service-connected disabled veteran. 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.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

⁴² AG ¶ 2(a)(1)–(9).