



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



In the matter of:)
)
-----) ISCR Case No. 09-08385
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

March 25, 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 unresolved. Applicant failed to present sufficient evidence to overcome the security concerns raised by 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 8, 2010, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find that it was 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 guidelines 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 timely answered the SOR. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

On or about December 23, 2010, the Agency submitted its written case consisting of all relevant and material information that could be adduced at a hearing.³ This so-called file of relevant material (FORM) was mailed to Applicant and received by him on or about January 16, 2011. He then had a 30-day period to submit a response setting forth objections, rebuttal, extenuation, mitigation, or explanation. To date, he has not replied. The case was assigned to me February 24, 2011.

Findings of Fact

Applicant is a 40-year-old employee of a federal contractor. He married for the first time in 1998, and they separated in 2008. He has one child, a son, born in 2004. His employment history is summarized as follows: (1) he worked as a real estate agent from April 1997 to about December 2008; (2) for about two months in 2008, he worked as a role player/interpreter for a federal contractor; (3) from December 2006 to December 2008, he was self-employed in the discount cigarette business; (4) and from December 2008 to present, he has worked as a linguist for a federal contractor. His job duties require him to support the mission of the U.S. Army in operations overseas.

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 Directive, Enclosure 3, ¶ E3.1.7.

³ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which are identified as exhibits in this decision.

Applicant has a history of financial problems or difficulties that are unresolved. In his Answer to the SOR, he admitted the four delinquent debts. The first debt is a charged-off credit card account for \$8,209. The second is a charged-off credit card account for \$24,423. The third is a charged-off home-equity loan for \$48,763. And the fourth is a foreclosed mortgage loan (owed to the same creditor as the home-equity loan) that had a high credit or balance of more than \$500,000. Applicant has not taken any action to resolve the four delinquent debts because he believes he cannot pay them as the accounts are charged-off and no longer exist in the lender system.⁴ He did not present any information showing that any of the debts were forgiven or cancelled.

Applicant attributes his financial problems to a downturn in the real estate market that affected his ability to earn an income as a real estate agent. In turn, this resulted in his home going into foreclosure. He then started his own business (discount cigarettes), but it did not prosper. He tried to keep it afloat by using his credit cards, but that ended badly. He is now earning a good income working as a linguist for a federal contractor. A personal financial statement from February 2009 revealed a gross monthly income of \$5,500 with a net remainder of \$1,430;⁵ and a personal financial statement from November 2009 revealed a gross monthly income of \$15,400 with a net remainder of \$7,050.⁶ The later also shows what appears to be cash reserves of about \$19,000.

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.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.

⁴ Answer to SOR.

⁵ Exhibit 7.

⁶ Exhibit 9.

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.

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 for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, 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.

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).

¹⁷ Executive Order 10865, § 7.

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:

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, or negligent in 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, which are unresolved. With that said, it is probable that Applicant does not owe a deficiency balance stemming from the foreclosure because it took place in a state that has an antideficiency statute, which serves to limit the rights of secured creditors to recover in excess of the security. (SOR ¶ 1.d) Still, the three charged-off debts for about \$80,000 raise security concerns because they indicate inability or unwillingness to satisfy debts²¹ and a history of not meeting financial obligations²² within the meaning of Guideline F. (SOR ¶¶ 1.a–1.c) The facts are sufficient to establish these two disqualifying conditions.

There are six mitigating conditions to consider under Guideline F.²³ 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;

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).

²³ AG ¶ 20(a)–(f).

¶ 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 here is ¶ 20(b). It is probable that Applicant's financial problems were caused, in part, by his separation from his wife in 2008 and the downturn in the real estate market. These were circumstances largely beyond his control. This is difficult to measure, however, because Applicant has presented scant information tying these circumstances to his financial problems. Accordingly, this mitigating condition receives limited weight.

What is missing here is a plan or effort to resolve the three charged-off debts for about \$80,000. Applicant has taken no action in this regard, perhaps under the belief that he no longer owes the debts because they are charged off.²⁴ His belief is mistaken. A charge off²⁵ is simply an action by a creditor to treat an account receivable as a loss or expense because payment is not likely. It is certainly an adverse factor on a credit report because it indicates that a debtor has become seriously delinquent on a debt. Although written off as a bad debt, the debt is still legally valid, and it may be collected by the creditor for the amount in full as permitted by law of the particular jurisdiction. Given the lack of a realistic plan or a serious effort to resolve the three charged-off debts, it is difficult to predict if or when Applicant will resolve his indebtedness.

To conclude, the evidence of Applicant's financial problems, past and present, justifies current doubts about his 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-

²⁴ See Exhibit 11(responses to interrogatories).

²⁵ *Black's Law Dictionary* 266 (Bryan A. Garner ed., 9th ed., West 2009).

person concept²⁶ and Applicant's favorable evidence. Nevertheless, Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. Time will tell if Applicant has both the ability and willingness to resolve his financial problems. 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:	Against Applicant
Subparagraphs 1.d:	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

²⁶ AG ¶ 2(a)(1)–(9).