



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



In the matter of:)
)
-----) ISCR Case No. 10-00076
)
Applicant for Security Clearance)

Appearances

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

August 22, 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 he has a history of financial problems or difficulties (multiple delinquent debts). He relied on credit in an attempt to keep his welding company afloat during a business downturn, which in time led to closure of his company. This circumstance was largely beyond his control and it is unlikely to recur. He has paid several debts, but others remain unresolved. Looking at the case as a whole, Applicant's financial problems were situational and directly related to the business failure as opposed to financial irresponsibility. 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 April 7, 2011, 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 May 27, 2011. The hearing took place June 6, 2011. The transcript (Tr.) was received June 15, 2011.

Findings of Fact

The SOR alleged ten delinquent debts ranging in amounts from \$298 to \$17,217 for a total of about \$51,621. In Applicant's reply to the SOR, he admitted all the debts except for the smallest debt of \$298. His admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 53-year-old employee of a federal contractor. His educational background includes one year of college and one year of vocational school. He began his current employment as a heavy-equipment operator in about June 2008. His job involves destroying military equipment for scrap as well as duties related to unexploded ordnance located on the training range. He is seeking an industrial security clearance for the first time.

In 1998, Applicant began his own welding company specializing in marine work, which involved the leisure or recreation world of boating.² He was a sole proprietor and operated as a limited liability company. The company did quite well during 1999–2005 period, but then began to slow. By 2007, his company was operating in the negative, and the situation further deteriorated in 2008 when the economy worsened. He last operated the company as a business in 2009. Although he still has the building and equipment, it is now considered a hobby for tax purposes.³ During the period when his company was failing, he relied on credit in an attempt to keep it afloat. As a result, he

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. 33-35.

³ Tr. 74.

incurred a substantial amount of debt, which has since become delinquent, and many of those debts are set forth in the SOR.

Applicant denies the \$298 collection account for television services in SOR ¶ 1.a. He currently has an account in good standing for the same television services, and he believes the \$298 debt is his son's, who has the same name. Otherwise, he admits all the other debts alleged in the SOR. He explained those debts were incurred for the operation of his failed company.⁴ He has not paid, settled, or otherwise resolved those debts, but he has addressed others. In response to Agency interrogatories, he presented documentary evidence showing that during 2009–2010 he paid, settled, or otherwise resolved several delinquent accounts related to the company.⁵ He satisfied two judgments and paid or settled four other debts. The judgments were for \$1,377 and \$1,576;⁶ the debts included amounts of \$2,200, \$1,951, and \$800.⁷ None of those matters were alleged in the SOR.

Last year, Applicant and his wife earned a gross income of about \$91,000.⁸ He earned about \$43,000 and his wife earned about \$48,000 working from home as a medical transcriber. Based on a personal financial statement, it appears they are now living within their means and paying their recurring expenses.⁹

Concerning the delinquent debts, Applicant and his wife are following the advice of a nationally known financial expert on how to get out of debt.¹⁰ Applicant intends to pay off the smallest debt first and then go to the next debt.¹¹ His plan is to save sufficient money and then negotiate a settlement for a lesser amount.

For the last several years, Applicant has actively participated in constructive community involvement by volunteering his time to an annual three-day festival that raises money for charity.¹² He has served on the board of directors for about five years

⁴ Tr. 39–50; Exhibit 3 (subject interview).

⁵ Exhibit 4; Tr. 59–63.

⁶ Exhibit 2 at 3; Exhibit 4.

⁷ Exhibit 4.

⁸ Tr. 71.

⁹ Exhibit 4; Tr. 50–56.

¹⁰ Tr. 65–67 (Dave Ramsey is a nationally syndicated radio talk-show host and best-selling author. His book, entitled *The Total Money Makeover: A Proven Plan for Financial Fitness*, is designed to help people become free of debt and build wealth).

¹¹ Tr. 56–59.

¹² Tr. 68–70.

and has served as president for three years. As such, he has been personally responsible for handling large sums of cash, at the six-figure level, and has done so without incident.

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.¹³ 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.”¹⁴ 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.¹⁵ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁶

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁷ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁹ In addition, an applicant has the ultimate

¹³ *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).

¹⁴ 484 U.S. at 531.

¹⁵ Directive, ¶ 3.2.

¹⁶ Directive, ¶ 3.2.

¹⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁸ Directive, Enclosure 3, ¶ E3.1.14.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

burden of persuasion to obtain a favorable clearance decision.²⁰ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²¹ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²²

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.²³ 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,²⁴ 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.²⁵ 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.²⁶

²⁰ Directive, Enclosure 3, ¶ E3.1.15.

²¹ *Egan*, 484 U.S. at 531.

²² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²³ Executive Order 10865, § 7.

²⁴ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁵ 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).

²⁶ AG ¶ 18.

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 debts²⁷ and a history of not meeting financial obligations²⁸ 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. Any of the following may mitigate security concerns:

AG ¶ 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;

AG ¶ 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;

AG ¶ 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;

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

AG ¶ 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

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

The most pertinent here are: AG ¶ 20(a)—circumstance is unlikely to recur; AG ¶ 20(b)—conditions largely beyond one's control; and AG ¶ 20(d)—making a good-faith effort.

²⁷ AG ¶ 19(a).

²⁸ AG ¶ 19(c).

Applicant's problematic financial history is due to the failure of his welding company. This circumstance is unlikely to recur because the company is no longer in business, and so, he is no longer incurring business-related expenses and debts. Working in a part of the economy (marine and boating) that relies on discretionary spending, his company was unable to survive the substantial downturn in the business cycle. His company's failure was caused by difficult economic conditions largely beyond his control. He acted responsibly under the circumstances by attempting to keep the company afloat by using credit until realizing that was futile. He sought and obtained full-time employment in 2008. Moreover, he has made a good-faith effort to repay delinquent debts as shown by paying off two judgments and four debts in 2009 and 2010. These were not merely token payments for minor amounts. He has a reasonable plan in place to address the remaining debts. At hearing, he impressed me as serious and determined, although obviously it will take time to resolve the outstanding delinquent debts. Also weighing in his favor is that he did not incur this indebtedness due to irresponsible or frivolous spending, living a high-end lifestyle, deceptive or illegal financial practices, gambling or substance abuse, or other matters of security concern. Looking at the case as a whole, Applicant's financial problems were situational and directly related to the business failure as opposed to financial irresponsibility.

To conclude, Applicant presented sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns, and I am persuaded that he will exercise the required good judgment, reliability, and trustworthiness. In reaching this conclusion, I gave due consideration to the nine factors of the whole-person concept.²⁹ Accordingly, I conclude that 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.j:	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

²⁹ AG ¶ 2(a)(1)–(9).