



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-00922
)
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 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 (multiple delinquent debts). His indebtedness is largely unresolved. 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 March 9, 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 April 28, 2011. The hearing took place June 7, 2011. The transcript (Tr.) was received June 16, 2011.

The record was kept open until June 21, 2011, to provide Applicant an opportunity to submit documentary information in support of his case, as he provided none at the hearing. Applicant made two submissions, the first was timely and the second was untimely. Nevertheless, without objections, all post-hearing matters are marked and admitted as follows: Exhibit A—credit report, dated June 1, 2011, with highlights (this is a copy of Exhibit 7); Exhibit B—correspondence related to the debt in SOR ¶ 1.a; Exhibit C—correspondence related to the debt in SOR ¶ 1.b; Exhibit D—correspondence related to the debt in SOR ¶ 1.c; Exhibit E—correspondence related to the debts in SOR ¶¶ 1.d and 1.e; Exhibit F—correspondence related to the debt in SOR ¶ 1.f; Exhibit G—correspondence related to the debt in SOR ¶ 1.g; Exhibit H—correspondence related to the debt in SOR ¶ 1.h; Exhibit I—correspondence unrelated to any debt in the SOR; and Exhibit J—correspondence related to the debt in SOR ¶ 1.a.

Findings of Fact

The SOR alleged eight delinquent debts ranging in amounts from \$51 to \$8,757 for a total of about \$17,871. Applicant's answers to the SOR allegations were mixed. His admissions to three debts are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 47-year-old employee of a federal contractor. His educational background includes some college and military education. He is employed as a logistics analyst for a large company engaged in defense contracting. He is seeking to obtain an industrial security clearance in conjunction with his employment.

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.

Applicant's employment history includes military service in the U.S. Army.² He served on active duty in the Army during 1983–1992. He worked as a supply specialist. His military service includes deployment to Southwest Asia for the 1990–1991 Persian Gulf War.

Applicant is married, and he and his wife have two children, ages 19 and 20, for whom they provide financial support. His wife is a recently retired military servicemember (pay grade E-7). He has had multiple moves and multiple jobs over the years due to her military assignments. For example, his security clearance application reports eight different jobs from 1999 to present. They have lived in the same city since 2006, and it appears they intend to make this location their home. His wife is employed as a federal civilian employee on a military installation. Altogether, Applicant and his wife earn an annual gross income of approximately \$100,000 to \$150,000.³ It consists of Applicant's annual salary of about \$65,000, with the balance consisting of his wife's annual salary, her military retired pay, and her disability compensation from the Department of Veterans Affairs (VA).

Applicant has a history of delinquent debts. That history is established by credit reports and information provided by him.⁴ The current status of debts, as alleged in the SOR, is discussed below.

The debt in SOR ¶ 1.a is for a \$2,921 collection account. It stems from an apartment lease entered into by Applicant's spouse when she initially moved to the city in which they now reside. Applicant has disputed this debt due to dissatisfaction with the apartment, which, in turn, led them to vacate the apartment before the lease expired.⁵ He formally disputed the debt with a credit reporting agency, and the result was that the debt was confirmed with a balance due of \$599.⁶ This debt is unresolved.

The debt in SOR ¶ 1.b is for a \$377 charged-off account. The debt is now paid in full.⁷

The debt in SOR ¶ 1.c is for a \$402 collection account. The debt is now settled in full.⁸

² Tr. 76–79.

³ Tr. 64–66.

⁴ Exhibits 2–7.

⁵ Exhibit B.

⁶ Exhibit J.

⁷ Exhibit C.

⁸ Exhibit D.

The debt in SOR ¶ 1.d is for a \$716 collection account. It appears to involve the same creditor as the debt in SOR ¶ 1.e; the last four digits of the account number are 7946. The 2008 credit report reflects this was a revolving account (a credit card account) that was closed by the credit grantor and resulted in a charge off of \$1,489 in June 2004.⁹ The 2009 credit report reflects a zero balance and notes that the account was sold to another creditor.¹⁰ This debt does not appear in the 2011 credit reports.¹¹ At hearing, Applicant did not recall this account.¹²

The debt in SOR ¶ 1.e is for a \$2,106 collection account. It appears to involve the same creditor as the debt discussed above; the last four digits of the account number are 6023. Both the 2008 and 2009 credit reports reflect that this was a credit card account that was closed by the credit grantor and resulted in a charge off. This debt does not appear in the 2011 credit reports. At hearing, Applicant did not recall this account.

In his post-hearing submission, Applicant presented a letter from the credit card company involved in debts in SOR ¶¶ 1.d and 1.e.¹³ The letter provides that they investigated a fraud claim as reported by Applicant and determined it to be valid. The letter was in reference to an account ending in the last four digits of 7149, which do not match the two debts above, and they remain unresolved.

The debt in SOR ¶ 1.f is for a collection account for \$8,757. At hearing, Applicant stated that debt was being paid and the balance was about \$5,000.¹⁴ In his post-hearing submission, he presented a letter from a collection agency showing a debt was settled in full in April 2010.¹⁵ A review of the credit reports reveals that the creditor's letter of settlement related to another collection account for \$1,158 with the same creditor;¹⁶ the last four digits of the account number are 5539. The \$8,757 debt is unresolved.

The debt in SOR ¶ 1.g is for a \$51 collection account. Applicant's attempts to track down this minor debt were unsuccessful.¹⁷ This debt is unresolved.

⁹ Exhibit 2.

¹⁰ Exhibit 3.

¹¹ Exhibits 6 and 7.

¹² Tr. 41–42.

¹³ Exhibit E.

¹⁴ Tr. 43.

¹⁵ Exhibit F.

¹⁶ Exhibit 3 at 7.

¹⁷ Exhibit G.

The debt is SOR ¶ 1.h is for a \$2,541 collection account. This debt is now settled in full.¹⁸

In summary, concerning the eight delinquent debts alleged in the SOR, Applicant has paid or settled three debts for about \$3,320 in total. Five debts are unresolved for a total of about \$13,000.

In addition to the matters in the SOR, Applicant has owed back taxes to the IRS.¹⁹ As of August 2010, Applicant completed an installment agreement to repay back taxes for tax years 2003 and 2006 for a total of about \$2,356. He also indicated that he may owe \$4,000 in back taxes for tax year 2010, but the matter was pending.

Concerning financial assets, Applicant testified that both he and his wife had unknown, but likely small, amounts of money in 401(k) accounts.²⁰ He also testified that they had a “couple thousand” in a bank account, but otherwise have no financial assets.²¹

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.²² 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.”²³ 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.

¹⁸ Exhibit H.

¹⁹ Exhibit 5; Tr. 61–64.

²⁰ Tr. 70.

²¹ Tr. 70–71.

²² *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).

²³ 484 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.²⁴ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³⁰ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.³¹

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.³² Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

²⁴ Directive, ¶ 3.2.

²⁵ Directive, ¶ 3.2.

²⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁷ Directive, Enclosure 3, ¶ E3.1.14.

²⁸ Directive, Enclosure 3, ¶ E3.1.15.

²⁹ Directive, Enclosure 3, ¶ E3.1.15.

³⁰ *Egan*, 484 U.S. at 531.

³¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

³² Executive Order 10865, § 7.

Analysis

Under Guideline F for financial considerations,³³ 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.³⁴ 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.³⁵

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, and these matters are ongoing. This raises security concerns because it indicates inability or unwillingness to satisfy debts³⁶ and a history of not meeting financial obligations³⁷ 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;

³³ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

³⁴ 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).

³⁵ AG ¶ 18.

³⁶ AG ¶ 19(a).

³⁷ AG ¶ 19(c).

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.

I have considered all the 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 has had full-time employment dating back to at least 1999. He has had multiple jobs, which may have inhibited his ability to increase his salary, but recently he has been making a good salary working for a defense contractor. His wife is gainfully employed and her income is supplemented by her military retired pay and VA disability compensation. Although they are now earning more than \$100,000 annually, they have little in way of financial assets. This is relevant concerning Applicant's ability to repay the delinquent debts. Moreover, his delinquent debts are largely unresolved as established in the findings of fact. During the hearing, Applicant came across as lacking in command or knowledge of his finances, which does not inspire confidence, and it suggests a degree of unwillingness to repay. What is missing here is responsible conduct coupled with a good-faith effort during the recent past to repay or otherwise resolve his delinquent debts. His good intentions and honorable military service are insufficient to mitigate the security concerns raised by his ongoing financial problems.

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 concept³⁸ and Applicant's favorable evidence, to include his honorable military service. Nevertheless, Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

³⁸ AG ¶ 2(a)(1)-(9).

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F: Against Applicant

Subparagraphs 1.a–1.h: 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