



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



In the matter of: )  
 )  
----- ) ISCR Case No. 10-01849  
 )  
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, to include an ongoing Chapter 13 bankruptcy case, which are unresolved. Other than the bankruptcy payments, he has not made any payments on his delinquent debts. At hearing, Applicant did not present any documentary evidence in support of his case. 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,<sup>1</sup> on August 25, 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. No such documentation was received.

## Procedural Matters

Department Counsel conceded that the delinquent debt alleged in SOR ¶ 1.g was included in Applicant's Chapter 13 bankruptcy case.<sup>2</sup> Accordingly, alleging it separately amounts to a duplication or redundancy in the SOR. On this basis, SOR ¶ 1.g is decided for Applicant.

## Findings of Fact

In his Answer to the SOR, Applicant admitted all the delinquent indebtedness alleged except for the charged-off account alleged in SOR ¶ 1.e. His admissions are incorporated herein 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. He married for the third time in 2003. He has worked as a coating inspector at a shipyard for his current employer since May 2009. This is the first time he has applied for a security clearance

---

<sup>1</sup> 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.

<sup>2</sup> Tr. 66.

to work in the defense industry,<sup>3</sup> although he held a clearance when he was in the military.

Applicant's employment history includes active duty military service in the U.S. Navy. He retired in 2005 after 20 years of honorable service. He held a security clearance (issued by the Navy) during some of this time without a negative incident. He retired at the pay grade of E-6; his rate was petty officer first class; and his rating was boatswain's mate. He has had no periods of unemployment since his retirement from the Navy. He has worked as a coating inspector for two previous companies before his current position in 2009.

Applicant has a history of financial problems or difficulties, which he does not dispute. He traces his problematic financial history to his second marriage. He and his second wife separated in about 1999 or 2000, and they eventually divorced in 2002. The circumstances surrounding the separation were difficult at times. He essentially turned over his military pay to his second wife and relied on her to make payments on a mortgage loan. In turn, Applicant got by on little income while living in military housing. He resumed living in the marital home in about 2001, and he then learned the mortgage loan was in default. He continues living in that home to date. The mortgage loan was listed as a Schedule D secured debt in his 2008 Chapter 13 bankruptcy case. He is now in the process of trying to modify the terms of the mortgage loan.

Several years after the divorce from his second wife, Applicant decided to address his indebtedness through a Chapter 13 bankruptcy case.<sup>4</sup> He filed the necessary paperwork in February 2008. The bankruptcy court approved or confirmed the repayment plan in June 2008, at a rate of \$492 monthly for 60 months. The case included approximately \$28,000 in Schedule F unsecured debts owed to multiple creditors. As of May 2010, he had paid nearly \$12,000 into the repayment plan.<sup>5</sup> At hearing, he testified that his payments are up-to-date, but he did not present any documentary evidence to confirm or corroborate his testimony.

In addition to the bankruptcy case, the SOR alleges five delinquent debts in amounts ranging from \$313 to \$9,516 for a total of about \$11,539. (SOR ¶¶ 1.b-1.f) Those debts consist of two unpaid judgments and three charged-off accounts, and they are established by the documentary evidence.<sup>6</sup> The first unpaid judgment stems from a July 2007 default judgment for \$529.<sup>7</sup> The second stems from a December 2008 default

---

<sup>3</sup> Exhibit 1.

<sup>4</sup> Exhibit 6.

<sup>5</sup> Exhibit 2.

<sup>6</sup> Exhibits 3, 4, 5, 7, and 8.

<sup>7</sup> Exhibit 8.

judgment for \$9,516.<sup>8</sup> None of these debts, including the unpaid judgments, was included in the bankruptcy case. To date, Applicant has not made any payments on these debts. At hearing, he did not present any documentary evidence showing the current status of these five debts.

## 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.<sup>9</sup> 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.”<sup>10</sup> 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.<sup>11</sup> An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>12</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>13</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>14</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

---

<sup>8</sup> Exhibit 7.

<sup>9</sup> *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 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>10</sup> 484 U.S. at 531.

<sup>11</sup> Directive, ¶ 3.2.

<sup>12</sup> Directive, ¶ 3.2.

<sup>13</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>14</sup> Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.<sup>15</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>16</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>17</sup> The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>18</sup>

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.<sup>19</sup> 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,<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

---

<sup>15</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>16</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>17</sup> *Egan*, 484 U.S. at 531.

<sup>18</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>19</sup> Executive Order 10865, § 7.

<sup>20</sup> AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>21</sup> 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).

<sup>22</sup> 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 debts<sup>23</sup> and a history of not meeting financial obligations<sup>24</sup> 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.<sup>25</sup> 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 record evidence as a whole, and none, individually or in combination, is sufficient to rebut, explain, extenuate, or mitigate

---

<sup>23</sup> AG ¶ 19(a).

<sup>24</sup> AG ¶ 19(c).

<sup>25</sup> AG ¶ 20 (a)–(f).

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 drawn out separation and eventual divorce from his second wife fall into this category. Nevertheless, these circumstances took place years ago during 1999–2002, and given the passage of time, they receive limited consideration under ¶ 20(b).

To his credit, in 2008, he took action via the Chapter 13 bankruptcy case to resolve his delinquent indebtedness. He is in the middle a 60-month repayment plan, and he paid nearly \$12,000 into the plan as of May 2010. These circumstances receive consideration under ¶ 20(d) because they show a good-faith effort. But without documentary proof, I cannot credit Applicant with timely payments in full beyond May 2010.

Of concern, too, is Applicant's failure to address the five delinquent debts ranging in amounts from \$313 to \$9,516 for a total of about \$11,539. He has, apparently, made no effort to resolve these debts. This circumstance militates against Applicant's case that he is making a good-faith effort to repay or otherwise resolve his delinquent indebtedness.

Further undercutting Applicant's case in mitigation is the lack of documentary evidence presented at hearing or post-hearing. In cases such as this—where the ultimate burden of persuasion is on an applicant seeking access to classified information—it is reasonable to expect an applicant to present documentary evidence showing his efforts, both past and present, to resolve the financial matters at issue. Here, Applicant has not done so, and I am left to speculate about these matters. And such speculation does not help Applicant's case.

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 concept<sup>26</sup> and Applicant's favorable evidence, which was not insubstantial. Nevertheless, Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

---

<sup>26</sup> 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.f:	Against Applicant
Subparagraph 1.g:	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