



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



In the matter of:)
)
-----) ISCR Case No. 10-02304
)
Applicant for Security Clearance)

Appearances

For Government: Francisco J. Mendez Jr., Esq., Department Counsel
For Applicant: *Pro se*

March 3, 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, which are ongoing. His history includes two Chapter 7 bankruptcy cases resulting in discharge, back taxes, tax liens, and non-filing of state and federal income tax returns for several years, and delinquent debts. Applicant did not present sufficient evidence to 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 July 20, 2010, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find it is 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. 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 answered the SOR and requested a hearing. The case was assigned to me September 7, 2010. The hearing took place October 13, 2010. The transcript (Tr.) was received October 21, 2010.

The record was kept open until November 15, 2010, to allow Applicant to submit additional documentary evidence concerning his efforts to address his tax problems. He made a timely submission and it is admitted, without objections, as Exhibit E.

Findings of Fact

Applicant is a 54-year-old employee of a federal contractor. He has been married and divorced twice. He married for the third time in 2009. He has two children from his first marriage. His 17-year-old son is now living in his household. His eldest child, a 20-year-old daughter, is living on her own, but he provides her financial assistance on a regular basis.

Applicant's employment history includes honorable military service in the U.S. Navy. He served on active duty 1973–1977. He completed the Navy's nuclear power school and then served aboard an aircraft carrier as a nuclear reactor plant operator. After he was discharged from the Navy, he attended a state university where he earned a bachelor's degree in nuclear engineering in 1982.

Applicant has had a varied career path working for several entities, to include working as chief scientist, entrepreneur and inventor, software consultant, and senior engineer.² He reports that he has expertise in the field of artificial intelligence. More recently in 2009, he obtained a project scientist position with a subcontractor to a

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 Exhibit A.

defense contractor. He had that job for less than one year. He began his current employment as a software engineer with a federal contractor in September 2009. For this position, he completed a security clearance application in November 2009.³

Applicant's employment history also includes periods of unemployment. For example, he resigned from a position as chief scientist in mid-2006 due to marital problems with his second wife. He was then unemployed until early 2009, when he resumed employment. This period of unemployment is consistent with his Social Security earnings record that shows taxed earnings of \$51,148 in 2006, which is a substantial decrease from \$98,850 in 2005.⁴ Likewise, it shows zero earnings in 2007 and 2008. In addition, the record shows earnings of about \$3,200 in total during 1993–1995, less than \$15,000 in earnings in 1997, and zero earnings in 1998 and 1999. He earned about \$98,000 in 2009 after resuming employment. His current annual salary is about \$110,000.

Applicant has a history of financial problems or difficulties, which are ongoing.⁵ He does not dispute his adverse financial history, but attributes it to a combination of his two divorces, a major health problem, and periods of unemployment.

Applicant married his first wife in 1987, and the marriage ended in divorce in 1995. During the marriage, he was diagnosed with spinal meningitis that required surgery and a prolonged period of recovery. This resulted in unemployment for him and a great deal of uninsured medical expenses. His wife, whom he had put through medical school, left him for another man. He sought relief from his indebtedness via a Chapter 7 bankruptcy case filed in 1994. (SOR ¶ 1.a) The court granted him a discharge of his liabilities in 1995.

Applicant married his second wife in 2000, and the marriage ended in divorce in 2007. His wife was an accountant, and he understood that she was taking care of all financial matters, including the filing of state and federal tax returns. His wife left him for another man. He reports that his wife took all the money from a joint bank account. This, in turn, resulted in the second Chapter 7 bankruptcy case. (SOR ¶ 1.b) The case was filed in 2005, and the court granted him a discharge of about \$99,000 in liabilities in 2006. The circumstances of his wife's departure troubled him greatly, leading to his resignation as chief scientist of a company in mid-2006. He resigned because he felt he was too distracted, troubled, or depressed to concentrate on his job responsibilities.

A period of unemployment followed when Applicant lived in an RV and survived by living on the proceeds of a retirement account as well as receiving assistance from a good friend. It is most probable that he was in a funk, if not clinically depressed, during

³ Exhibit 1.

⁴ Exhibit D.

⁵ Exhibits 2–10.

most of this period. He recovered when he had the good fortune of meeting the woman who became his current wife. With her encouragement, Applicant promptly found a job as a project scientist, which he began in January 2009. That job lasted less than a year due to funding issues outside of his control. He obtained his current job as a software engineer within a month or so, and he describes it as the best job he has ever had. He has a good employment record there as verified by a highly favorable letter of recommendation from a manager.⁶

Applicant discovered the full extent of his current financial problems during the background investigation. A state where he previously lived has filed three tax liens against him.⁷ (SOR ¶¶ 1.c–1.e) The first tax lien was filed in May 2007 in the amount of \$5,517; the second was filed in October 2007 for \$4,864; and the third was filed in April 2009 for \$6,519. The liens remain unresolved.

In addition to the three state tax liens, the SOR also alleges six delinquent accounts that have been placed for collection. (SOR ¶¶ 1.f–1.k) The amounts range from \$91 to \$2,027 for a total of \$4,053. In his Answer to the SOR, as well as his hearing testimony, Applicant denied these debts and he claimed that some were paid and some were not his responsibility. He did not present any documentary evidence to support his assertions concerning these debts.

In October 2010, Applicant retained the services of a certified public accountant (CPA) to help him address matters involving the non-filing of federal and state income tax returns for years 2003–2008.⁸ As of the end of October, the CPA completed the preparations of all the delinquent income tax filings in question and delivered the same to Applicant for mailing.⁹ There are balances due on all the returns that will result in tax assessments being levied upon Applicant, but the record does not reflect the amounts. The CPA's next step is to negotiate a repayment plan with the tax agencies to resolve the outstanding debts. That process is likely now in progress.

Although Applicant has earned a good income during 2009–2010, his current financial situation remains tight. He reported having no financial reserves. In addition, his wife has a medical condition that results in substantial out-of-pocket medical expenses. He estimated the expenses at \$2,000 to \$3,000 monthly, although he presented no documentary evidence to verify those amounts.

⁶ Exhibit C.

⁷ Exhibit 7.

⁸ Exhibit B.

⁹ Exhibit E.

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.¹⁰ 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.”¹¹ 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.¹² An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁴ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁷ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁸

¹⁰ *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).

¹¹ 484 U.S. at 531.

¹² Directive, ¶ 3.2.

¹³ Directive, ¶ 3.2.

¹⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁵ Directive, Enclosure 3, ¶ E3.1.14.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ *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.¹⁹

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.²⁰ 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,²¹ 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.²² 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.²³

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

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

²⁰ Executive Order 10865, § 7.

²¹ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²² 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).

²³ AG ¶ 18.

unwillingness to satisfy debts²⁴ and a history of not meeting financial obligations²⁵ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions.

Under Guideline F, there are six conditions that may mitigate security concerns:²⁶

¶ 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;

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

Of those mitigating conditions, the most pertinent are ¶¶ 20(a), 20(b), 20(c), and 20(d). I have considered these four mitigating conditions in light of the record evidence as a whole, and none of them, individually or in combination, are sufficient to mitigate the security concerns stemming from Applicant's history of financial problems or difficulties dating back to at least 1994 and continuing to the present.

Applicant has experienced life events that were largely beyond his control and were major factors in his financial problems. His divorces, along with his illness, were the probable reasons for his two Chapter 7 bankruptcy cases. Nevertheless, his financial problems continued after the last discharge in bankruptcy in 2006. In part, this

²⁴ AG ¶ 19(a).

²⁵ AG ¶ 19(c).

²⁶ AG ¶ 20 (a)–(f).

is due to his unemployment from mid–2006 to January 2009, which resulted from his resignation, a circumstance that was not largely beyond his control. Since returning to work in 2009, Applicant has not acted responsibly under the circumstances. It appears that he did not become serious about addressing his tax issues, the item of most concern in this case, until sometime in 2010. To his credit, in October 2010, he retained a CPA to assist him and that process is ongoing. But the evidence also shows that his indebtedness to state and federal tax authorities will require repayment plans extending over a period of months if not years to complete.²⁷ It is too soon to tell if he will make the payments to the tax authorities. In addition, he did not present any documentary evidence to verify his claims about the other delinquent debts in the case. Looking forward, based on his well-established history of recurring financial problems, it is most probable that he will not resolve this situation in the near future, and that his financial problems will continue or recur.

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 concept²⁸ and Applicant’s favorable evidence. 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

²⁷ Exhibits B and E.

²⁸ AG ¶ 2(a)(1)–(9).