



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-03238
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

July 13, 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. He has not made any progress toward resolving approximately \$20,000 in delinquent debts, and it appears that he has no intention of making any effort to do so. 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 October 18, 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 February 9, 2011. The hearing took place March 29, 2011. The transcript (Tr.) was received April 6, 2011.

Findings of Fact

In response to the SOR, Applicant admitted that he is indebted on five delinquent debts for a total of approximately \$20,505. His admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 54-year-old employee of a federal contractor. His educational background includes a bachelor's degree in engineering. Except for about a six-month period during 2004–2005, Applicant has been continuously employed in his field since at least 1994.² He worked as a member of the scientific staff for a communications company from 1994 to December 2004, when he was laid off due to company downsizing. He was then unemployed until June 2005, when he began his current job as a senior systems engineer. He did not receive unemployment compensation during 2004–2005 because he received a severance package that covered five and a half months. He was earning an annual salary of about \$89,000 when he was laid off. His current employer hired him at an annual salary of about \$90,000, and he is now earning about \$109,000. He has a good employment record as shown by certificates of excellence or achievement awards, along with cash bonuses, presented to him in 2007, 2009, 2010, and 2011.³

Applicant's first marriage ended in divorce in 1996. He has three children. He adopted two children from his first wife, and the marriage produced one child. He has

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 Exhibit 1.

³ Exhibits A, B, C, and D.

regularly paid child support over the years, and he is now paying child support for one child, a son, who lives with Applicant's ex-wife but spends considerable time with him. The other two children are adults living on their own. Since 2003, Applicant has been married to his common-law wife, and they have no children of their own. His wife was formerly employed as a paralegal, but she has been unable to work for several years due to a chronic medical condition. Since about May or June 2008, she has received disability compensation from the Social Security Administration.⁴ Applicant reports that she receives about \$1,400 monthly that goes into a separate account controlled by his wife, and he is not familiar with the details of how she spends the money.⁵

Applicant is indebted to five creditors for delinquent debts for a total of approximately \$20,505, and they remain unpaid. Three of the debts stem from credit card accounts that were charged off or are in collection. One debt is from a line of credit that was charged off. And the fifth debt is an unpaid \$23 medical collection account. The five delinquent debts are established by Applicant's admissions, his statements, and three credit reports.⁶

In a December 2009 background interview, Applicant attributed the delinquent debts to not earning enough money to pay his current expenses, his wife's medical expenses, and the delinquent debts as well.⁷ At hearing, he stated that he has been living paycheck-to-paycheck for some time. Also at hearing, he did not submit any documentary evidence concerning the debts or any efforts made to repay or otherwise resolve the debts. He did not submit any documentary evidence concerning out-of-pocket medical expenses for his wife. And he did not submit any documentary evidence concerning his overall financial situation or his ability to repay the delinquent 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.

⁴ Tr. 54.

⁵ Tr. 75.

⁶ Exhibits 2, 3, 4, 5, and 6.

⁷ Exhibit 2.

It is well-established law that no one has a right to a security clearance.⁸ 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.”⁹ 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.¹⁰ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹¹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹² The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹³ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁴ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁵ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁶ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁷

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.

⁸ *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).

⁹ 484 U.S. at 531.

¹⁰ Directive, ¶ 3.2.

¹¹ Directive, ¶ 3.2.

¹² ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹³ Directive, Enclosure 3, ¶ E3.1.14.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

¹⁶ *Egan*, 484 U.S. at 531.

¹⁷ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.¹⁸ 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,¹⁹ 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.²⁰ 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.²¹

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 debts²² and a history of not meeting financial obligations²³ 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.²⁴ Any of the following may mitigate security concerns:

¹⁸ Executive Order 10865, § 7.

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

²⁰ 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).

²¹ AG ¶ 18.

²² AG ¶ 19(a).

²³ AG ¶ 19(c).

²⁴ AG ¶ 20 (a)–(f).

¶ 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.

I have considered these 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. Although he has had a well-paying job since June 2005—and is currently earning an annual salary of more than \$100,000—he has done virtually nothing to repay or resolve the delinquent debts totaling more than \$20,000. That amount is sizeable, but it is not so large that it is insurmountable. What is missing here is responsible conduct coupled with a good-faith effort to repay or otherwise resolve the delinquent debts. There is no evidence of attempts to negotiate settlements, there is no evidence of a pattern of payments made as part of a realistic plan to repay the debts, and there is no evidence of even a token payment in the recent past. Along with a lack of action, at hearing, Applicant displayed a misplaced focus concerning the matters under consideration. For example, at the beginning of his direct testimony, he sought to question Department Counsel about his case.²⁵ In his closing argument, he characterized Guideline F or the process in general or both as “absurd,” “ridiculous,” and “unfair,” and that he was undeserving of this level of scrutiny.²⁶ His misplaced focus did not help his case in mitigation. In addition, Applicant's case in mitigation suffers from a lack of supporting or corroborating documentary evidence.

²⁵ Tr. 46.

²⁶ Tr. 91–93.

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 concept²⁷ and Applicant's favorable evidence, to include his good employment record and his wife's medical condition and resulting disability. 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.d:	Against Applicant
Subparagraph 1.e:	For Applicant ²⁸

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 AG ¶ 2(a)(1)–(9).

²⁸ The unpaid \$23 medical collection account is decided for Applicant under the mighty legal doctrine of *de minimis non curat lex* (= the law does not concern itself with trifles). *Black's Law Dictionary* 496 (Bryan A. Garner ed., 9th ed., West 2009).