



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



In the matter of:)
)
-----) ISCR Case No. 10-03508
)
Applicant for Security Clearance)

Appearances

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

November 30, 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 problematic financial history, which includes a Chapter 7 bankruptcy case that ended in a discharge in 2003, and, more recently, delinquent debts totaling more than \$20,000, most of which are unresolved. Although he and his wife have experienced circumstances largely beyond their control, he has done little to help himself since beginning his employment with a federal contractor in 2009. It is simply too soon to tell if or when he will resolve his current financial problems. Applicant failed to present sufficient evidence to overcome the security concerns stemming from his problematic financial history. 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 6, 2010, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find that it was 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 timely answered the SOR and did not request a hearing, but then changed his mind and requested a hearing on February 18, 2011. The case was assigned to two other another administrative judges before it was assigned to me June 10, 2011. The hearing took place August 3, 2011. The transcript (Tr.) was received August 18, 2011.

Findings of Fact

The SOR alleged a 2003 Chapter 7 bankruptcy case that ended with a discharge and five delinquent accounts for a total of about \$20,598. In Applicant's reply to the SOR, he admitted all allegations and provided explanations. His admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 59-year-old employee of a federal contractor. His first marriage ended in divorce in 1987. He married his current wife in 1989. There are no minor children living in their household.

His employment history includes honorable active duty service in the U.S. Air Force during 1970–1990, which ended with his retirement as a technical sergeant (E-6). He receives retirement pay of about \$15,000 annually. He held a security clearance without a negative incident while serving in the Air Force.

Applicant has a history of financial problems, which he does not dispute. He and his current wife have been through bankruptcy twice, a Chapter 13 case that ended in discharge in 1996 and a Chapter 7 case that ended in discharge in 2003.² The Chapter

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 here. 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 Exhibits 7, 8, and 9. The Chapter 13 bankruptcy case is not alleged in the SOR. Accordingly, I have considered it for the limited purposes of evaluating the evidence of extenuation, mitigation, or changed circumstances and when assessing the evidence under the whole-person concept.

13 case, sometimes called a wage earner's plan or rehabilitation case, resulted in Applicant and his wife successfully completing a court-approved plan, which was confirmed in 1993, and they obtained a final decree and discharge in 1996. The Chapter 7 case, sometimes called a liquidation case, resulted in Applicant and his wife obtaining a final decree and discharge in 2003. The Chapter 7 case, as revealed in the Schedule F, includes unsecured debt of approximately \$56,000 based on 19 credit card accounts.³ He attributes the Chapter 7 case to becoming overextended on credit card debt.

As alleged in the SOR, and established by Applicant's admissions and the documentary evidence, the five delinquent debts are described as follows:

1. A \$297 utility account placed for collection. He has made payments on the debt and the balance is now about \$47.⁴
2. A \$12,174 credit card account that was charged off. He contacted the creditor by telephone, but was unable to meet their terms for settlement. He intends to contact them again when he is in a better financial position.⁵ The debt remains unresolved.
3. A \$957 credit card account placed for collection. He has made payments on the debt and the balance is now about \$557.⁶
4. A \$678 utility account placed for collection. He was unsure of the status of this account and had no supporting paperwork.⁷ The debt remains unresolved.
5. A \$6,492 debt stemming from a repossessed vehicle. He explained the debt was a deficiency balance owed from the purchase of a new vehicle in 2005, which ended with repossession the same year. He contacted the creditor by telephone, but was unable to meet their terms of settlement. He intends to contact them again when he is in a better financial position.⁸

By way of explanation,⁹ Applicant stated that he, along with his wife, worked as apartment managers during 1996–2006. After going through the Chapter 7 bankruptcy

³ Exhibit 9.

⁴ Exhibit F.

⁵ Tr. 76–77.

⁶ Exhibit D.

⁷ Tr. 77–78.

⁸ Tr. 78–80.

⁹ The facts in this paragraph are based mainly on Applicant's written statement (Exhibit A) and his testimony.

case in 2003, they experienced marital problems that led to their separation from about September 2004 to February 2005. They maintained separate households during this time. After resolving their marital problems, they decided to move to another state with the plan of Applicant starting a handyman business. He was well schooled in this area after working as an apartment manager for a decade. In August 2006, about a month after making their move, he was diagnosed with prostate cancer, which was so serious that it required immediate surgery. As a result, he was unable to work for three to four months for recovery and necessary follow-up treatment. Their stay in their new state was brief, as they returned to their state of current residence in November 2006. The next year, 2007, proved to be quite difficult. Applicant's adult son was killed in a construction accident in August.¹⁰ Then ten weeks later, the deceased son's wife died due to an accidental overdose. His son's death resulted in funeral and cemetery expenses of about \$14,646.¹¹ The bill was paid by a combination of his son's employer paying \$3,939, a donation of \$500, and a loan from a friend for \$10,706. Applicant was recently able to repay the loan with \$4,000 of his own money and money awarded from a workers' compensation case stemming from his son's death. Those monies have been rewarded to his son's minor daughter (his granddaughter). A wrongful death case is pending. Applicant's wife is unable to work outside the home due to medical problems.

Since returning to their state of current residence in late 2006, his employment history is as follows: (1) he worked as a maintenance supervisor from November 2006 to August 2007; (2) he worked as a handyman from July 2007 to August 2009; (3) he was unemployed during September and October 2009; (4) he worked as a general maintenance worker during October and November 2009; (5) he was unemployed during November and December 2009; and (6) he began his current job as a fuels technician/driver in December 2009.

Applicant's currently earns about \$22 hourly, and he estimated his gross wages for 2010 at about \$35,000 to \$40,000. Including his military retired pay, his gross wages for 2010 were about \$50,000 to \$55,000. He has no investment account and owns no real estate. The typical balance in his checking account is less than \$1,000.

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.

¹⁰ Exhibit B.

¹¹ Exhibit C.

It is well-established law that no one has a right to a security clearance.¹² 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.”¹³ 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.¹⁴ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁰ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²¹

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 and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

¹² *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).

¹³ 484 U.S. at 531.

¹⁴ Directive, ¶ 3.2.

¹⁵ Directive, ¶ 3.2.

¹⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁷ Directive, Enclosure 3, ¶ E3.1.14.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ *Egan*, 484 U.S. at 531.

²¹ 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.²² 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,²³ 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.²⁴ 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.²⁵

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in 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. The 2003 Chapter 7 bankruptcy case and five delinquent accounts for more than \$20,000 raise security concerns because they indicate inability or unwillingness to satisfy debts²⁶ and a history of not meeting financial obligations²⁷ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions, and the facts show that Applicant's financial house is in disrepair.

²² Executive Order 10865, § 7.

²³ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁴ 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); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

²⁵ AG ¶ 18.

²⁶ AG ¶ 19(a).

²⁷ AG ¶ 19(c).

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;²⁸

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 especially considered the mitigating conditions at AG ¶¶ 20(b) and 20(d). Nevertheless, none of the mitigating conditions, individually or in combination, are sufficient to overcome and mitigate the security concerns.

The evidence of Applicant's financial problems justifies current doubts about his 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 weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I gave due consideration to the

²⁸ ISCR Case No. 99-0201 (App. Bd. Oct. 12, 1999) (“[T]he concept of ‘good faith’ requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Such standards are consistent with the level of conduct that must be expected of persons granted a security clearance.”) (citations omitted); ISCR Case No. 02-30304 (App. Bd. Apr. 20, 2004) (relying on a legally available option, such as Chapter 7 bankruptcy, is not a good-faith effort) (citations omitted); ISCR Case No. 99-9020 (App. Bd. Jun. 4, 2001) (relying on the running of a statute of limitations to avoid paying a debt is not a good-faith effort).

whole-person concept²⁹ and Applicant's favorable evidence, to include his 20 years of honorable military service and his good employment record as verified by witness testimony during the hearing.³⁰ And I gave substantial weight to Applicant's marital separation during 2004–2005, his diagnosis and treatment for prostate cancer in 2006, his short-lived handyman business in 2006, his uneven employment history since 2006, the tragic death of his son in 2007, and his spouse's inability to work outside the home due to medical reasons. These are circumstances largely beyond his control that had a deleterious or adverse effect on his financial situation.

With that said, he has done little to help himself since beginning his full-time employment for a federal contractor in December 2009. For example, although he has initiated a good-faith effort to repay two of the five delinquent debts at issue, the total payments to date are about \$650, and he has made no progress on the largest two debts. Had he paid off the three smallest debts (for about \$1,932 in total), and established some sort of track record of consistent payments on the two largest debts, the outcome of this case may have been different. But at present, Applicant's problematic financial history is unresolved and ongoing. That history is simply inconsistent with the standards that apply to those who are granted access to classified information. Given Applicant's long-term history of financial problems, which dates to the Chapter 13 bankruptcy case, it is simply too soon to tell if or when Applicant will resolve his current financial problems. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision.

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

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

²⁹ AG ¶ 2(a)(1)–(9).

³⁰ Tr. 38–51.