



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



In the matter of:)
)
-----) ISCR Case No. 10-03908
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esq., Department Counsel
For Applicant: *Pro se*

May 31, 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 Applicant has a history of financial problems or difficulties as evidenced by more than \$60,000 in delinquent debt based on four charged-off credit card accounts. In November 2008, he entered into a debt-settlement program and has since made 29 monthly payments totaling about \$31,871, of which \$19,000 was used to settle two debts. That is sufficient to constitute initiating a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant presented sufficient evidence to overcome the security concerns raised by his history of financial problems. Accordingly, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on October 8, 2010, the Defense Office of Hearings and Appeals (DOHA) 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 timely answered the SOR. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

On or about December 28, 2010, Department Counsel submitted a written case consisting of all relevant and material information that could be adduced at a hearing.³ This so-called file of relevant material (FORM) was mailed but not received by Applicant. It was mailed again to Applicant on or about March 17, 2011, and received by him on or about March 27, 2011. He then had a 30-day period to reply with any objections, rebuttal, extenuation, mitigation, or explanation. His reply was timely received. It consists of the following: (1) a two-page memorandum wherein he explains his position in the case; and (2) an account activity statement from his debt-settlement program. Those matters are admitted as Exhibits A and B, respectively, without objections. The case was assigned to me May 12, 2011.

Findings of Fact

Applicant admits the four charged-off credit card accounts alleged in the SOR. His admissions are accepted as findings of fact. In addition, the following facts are established by substantial evidence.

Applicant is a 42-year-old employee of a federal contractor. He is not married, but resides with another person in a spouse-like relationship. His educational background includes a bachelor's degree. He is currently a part-time student in a master's degree program. His employer is paying for his graduate school while he continues to work full-time.

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 Directive, Enclosure 3, ¶ E3.1.7.

³ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which may be identified as exhibits in this decision.

Applicant's employment history includes military service in the U.S. Army during 1988–1996. After his honorable discharge in 1996, he obtained a job as a webmaster/programer for a publishing company. He worked there until May 2000, when he began his present job as a senior Linux system administrator with a large company engaged in defense contracting. He reports that another government agency granted him an interim clearance (at the secret level) in May 2000; it was granted in full in 2001; and it was renewed in 2006.⁴

Applicant has a history of financial problems or difficulties that he does not dispute. The SOR alleges, and he admits, four charged-off credit card accounts for about \$68,163 in total. In addition to admitting the SOR allegations, he disclosed several delinquent debts in October 2009, when he completed the security clearance application that is the basis for this case.⁵ He also disclosed that he was working with a law firm to establish a debt-settlement program to address his delinquent debts.

In November 2008, nearly a year before Applicant completed the security clearance application, he entered into a debt-settlement program to address his bad debts.⁶ It appears the debts are now being handled by third-party collectors as opposed to the original creditors. Through March 2011, he made 29 monthly payments of \$1,099 each totaling \$31,871, of which \$19,000 was used to settle two debts.⁷ The balance of the money (about 40%) was consumed in fees. The fees for the program (retainer and program fees) were quite high early in the plan. But since February 2010, it is limited to a monthly fee of \$49.99. The first debt, not alleged in the SOR, was settled in July 2010 for \$7,500, a substantial discount from the balance of \$20,487.⁸ The second debt, alleged in the SOR, was settled in March 2011 for \$11,500, again at a substantial discount.⁹

Applicant attributes his delinquent debts to living beyond his means and being financially naive. He intends to continue with the debt-settlement program and settle his other debts as well.

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

⁴ Exhibit 5 at 52–53.

⁵ Exhibit 5 at 53–60.

⁶ Exhibits 4 and 6.

⁷ Exhibits 4, 6, and B.

⁸ Exhibit 6.

⁹ Exhibit B.

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 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

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.

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

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.

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, 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. This history raises security concerns because it indicates inability or unwillingness to satisfy debts²⁴ and a history of not meeting financial obligations²⁵ within the meaning of Guideline F. The facts are sufficient to establish

²⁰ Executive Order 10865, § 7.

²¹ AG ¶¶ 18–20 (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.

²⁴ AG ¶ 19(a).

²⁵ AG ¶ 19(c).

these two disqualifying conditions. In addition, by his own admission, Applicant engaged in a practice or pattern of consistent spending beyond his means.²⁶

There are six mitigating conditions to consider under Guideline F.²⁷ 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 here is ¶ 20(d). Applicant has made documented progress in repaying his delinquent debts. As of March 2011, he made consistent monthly payments totaling more than \$30,000 into the debt-settlement program. As a result, two debts were settled for a total of \$19,000. He intends to continue making payments into the program and settle the other debts as well. His plan appears to be realistic and within his means to accomplish. It will take more time to resolve all delinquent debts, but that is not unusual since few people incur a substantial amount of bad debt overnight. His approach, although perhaps not the ideal or best or least expensive approach, is consistent with DOHA Appeal Board caselaw in that "an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant

²⁶ AG ¶ 19(e).

²⁷ AG ¶ 20(a)–(f).

actions to implement that plan.”²⁸ I conclude that making payments over the course of 29 months totaling more than \$30,000 qualifies as taking significant actions to implement his debt-settlement program. I further conclude that those actions are sufficient to constitute initiating a good-faith effort within the meaning of ¶ 20(d).

Applicant presented sufficient evidence to mitigate and overcome the security concerns raised by his history of financial problems. In reaching this conclusion, I gave due consideration to the whole-person concept²⁹ and Applicant’s favorable evidence. In this regard, Applicant receives credit for reporting the delinquent debts on his 2009 security clearance application, and for seeking assistance and following the guidance of his debt-settlement program. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for Applicant.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.d:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge

²⁸ ISCR Case No. 07-06482 at 2–3 (App. Bd. May 21, 2008 (citations omitted)).

²⁹ AG ¶ 2(a)(1)–(9).