



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



In the matter of:)
)
 -----) ISCR Case No. 10-03899
)
 Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: -----, Personal Representative¹

04/04/2013

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. The evidence shows he has a history of financial problems, which are largely due to a lengthy period of unemployment during 2008–2009. With assistance from two of his daughters, he is still in the process of resolving his financial problems. He has the financial means to repay overdue creditors, and he is not financially overextended. He failed to report his financial problems in response to multiple questions on his 2009 security clearance application, but his failure was not a deliberate omission, concealment, or falsification. Accordingly, this case is decided for Applicant.

¹ The personal representative’s name is redacted to protect Applicant’s privacy.

Statement of the Case

On August 10, 2011, the Department of Defense (DOD) sent Applicant 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.² The SOR is similar to a complaint, and it detailed the reasons for the action under the security guidelines known as Guideline F for financial considerations and Guideline E for personal conduct.

Applicant answered the SOR, but did not request a hearing. Department Counsel timely requested a hearing as allowed under the Directive. The hearing was initially scheduled for a date in November 2011 with a different judge and counsel. That hearing was cancelled because Applicant was unable to attend due to his overseas work location. What followed then were several months of delay and attempts to communicate with Applicant and his company's facility security officer (FSO). The Chief Administrative Judge, who had taken over the case on May 11, 2012, reassigned the case to me on September 21, 2012. After coordination and back-and-forth with Department Counsel and Applicant's Personal Representative, on October 31, 2012, I scheduled the hearing for January 22, 2013. Thereafter, on November 20, 2012, a notice of hearing was issued to Applicant.

The hearing took place as scheduled on January 22, 2013. The transcript (Tr.) was received January 29, 2013. The record was kept open until February 22, 2013, to allow Applicant to submit additional documentary evidence; the deadline was then extended to March 8, 2013. Applicant's post-hearing submission is marked and admitted, without objections, as Applicant Exhibits 21–26. In addition, the accompanying cover letter from Applicant's Personal Representative is marked and admitted, without objections, as Applicant Exhibit 27.³

Findings of Fact

Applicant is a 67-year-old employee for a company engaged in defense contracting. He works as a cultural advisor and linguist in support of the U.S. armed forces in Afghanistan, of which he is a native. He has had this job since October 2009.

² 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 Department of Defense 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.

³ At hearing, Government Exhibits 1–9 and Applicant Exhibits 1–20 were admitted.

His employment record as a defense contractor is excellent.⁴ He is seeking to obtain a security clearance for the first time.

Applicant was born, raised, and educated in Afghanistan. Trained as a medical doctor, he worked in the field of public health. He and his family immigrated to the United States in 1982, which was after the then Soviet Union invaded Afghanistan. He had a wife and three daughters when he immigrated; his fourth daughter was born in the United States in 1983. Relevant here are his eldest and youngest daughters, both of whom have and are assisting him in resolving his financial problems.

Applicant was unable to work in the medical field in the United States. As a result, he worked various jobs to support his wife and daughters. He worked for a manufacturing company for about 20 years until he lost his job due to downsizing in 2008. He was unemployed from May 2008 to October 2009, when he began his current job as a defense contractor. Applicant traces his financial problems to this period of unemployment.

In 2009, Applicant heard about job opportunities working in Afghanistan with the U.S. armed forces. He applied and was hired as a linguist in October 2009; he completed a security clearance application the same month.⁵ In response to Questions 26a–26p, he answered in the negative thereby denying any adverse financial history. But his background investigation revealed otherwise. For example, a November 2009 credit report revealed numerous accounts in some form of delinquency.⁶

In April 2010, Applicant was interviewed about his financial issues at his overseas work location.⁷ He provided information about a number of accounts. He explained that it was difficult to address his financial issues from Afghanistan, and that his youngest daughter, via a power of attorney, was working to address his financial issues. He stated that he answered the questions about his financial record in the negative because he did not know his bills qualified as delinquent; he did not know he had accounts that were past due; he did not know that he had accounts in collection; and he did not know his home mortgage loan was in foreclosure proceedings. This explanation is consistent with his hearing testimony in which he denied any intention to deliberately omit, conceal, or falsify his answers. In addition, the special agent who conducted the interview noted that Applicant appeared honest and open during the interview; he was concerned his finances could affect his security clearance; he understood most of the questions; and he did not seem very knowledgeable about his finances.

⁴ Applicant Exhibits 1–12.

⁵ Government Exhibit 1.

⁶ Government Exhibit 6.

⁷ Government Exhibit 2.

Concerning the financial matters, the SOR alleged 22 items that can be addressed together as follows: (1) six medical collection accounts in amounts ranging from \$147 to \$1,397 for a total of \$3,207; (2) six delinquent consumer accounts in amounts ranging from \$264 to \$2,691 for a total of \$5,512; (3) three charged-off student loan accounts for a total of \$66,000; (4) a mortgage loan with a past-due balance of \$81,000; (5) three collection accounts for a total of \$160 owed to the local city government; and (6) three Chapter 13 bankruptcy cases filed during 2010–2011 with each case ending in dismissal. These matters are addressed below.⁸

The past-due mortgage loan and Chapter 13 bankruptcy cases are factually interrelated and are discussed together. Applicant's mortgage loan became past due and eventually went into foreclosure proceedings due to a dispute about the mortgage loan.⁹ Applicant was then in Afghanistan, and his eldest daughter, who also has her father's power of attorney, acted on his behalf, including the filing of the bankruptcy cases during 2010–2011. She filed the bankruptcy cases, at the advice of legal counsel, as a way to delay or prevent the foreclosure proceeding. The dispute resulted in Applicant, again via his eldest daughter, suing the mortgage lender in August 2011. The lawsuit ended when the parties agreed to a settlement that allowed Applicant and his spouse to remain in the house and make mortgage loan payments as agreed. As a result, the past-due amount of about \$112,000 was added to the current loan balance; the modified balance is about \$379,000; the loan was converted to a fixed-rate loan at 5% with a term of 30 years; and monthly payments of about \$2,000 began in August 2012.

The three charged-off student loans stem from Applicant cosigning for his eldest daughter. She has assumed responsibility for the loans and they are in repayment.¹⁰ Likewise, the three collection accounts owed to the local city government are not the responsibility of Applicant. The debts stem from unpaid parking tickets for a car owned by his eldest daughter, but was being used at the time by one of her other sisters. The balance due is now \$204,¹¹ and his eldest daughter is working with the city and her sister to resolve the collection accounts.

The six medical collection accounts are largely resolved as follows: (1) the four accounts in SOR ¶¶ 1.a, 1.g, 1.h, and 1.o are with the same creditor, and they have a

⁸ Applicant Exhibit 27 was used as a guide in addressing the 22 items.

⁹ Applicant Exhibits 14–17.

¹⁰ Applicant Exhibit 20.

¹¹ Applicant Exhibit 22.

zero balance;¹² and (2) the two accounts in SOR ¶¶ 1.p and 1.q are pending resolution and the listed creditor does not have a record of the debts.¹³

The six delinquent consumer accounts are largely unresolved.¹⁴ Applicant's youngest daughter has been in contact with the various creditors. The plan to is repay the debt when the creditor can provide a record of the account and the amount owed, although she is having difficulty getting the necessary account information. Together, Applicant, his eldest daughter, and his youngest daughter are committed to ensuring that any existing debts are clarified and repaid as soon as possible. Applicant has more than sufficient financial means to repay the debts. He has earned a six-figure salary plus a five-figure bonus for each year he has worked in Afghanistan. As a result, he has more than \$300,000 in cash available for debt repayment.¹⁵

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁶ 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."¹⁷ 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.¹⁸ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁹

¹² Applicant Exhibit 21.

¹³ Applicant Exhibit 27.

¹⁴ Applicant Exhibits 23 and 27.

¹⁵ Applicant Exhibits 24–27.

¹⁶ *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).

¹⁷ 484 U.S. at 531.

¹⁸ Directive, ¶ 3.2.

¹⁹ Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁰ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²¹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²² In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²³ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁴ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁵

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.²⁶ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

Under Guideline F for financial considerations,²⁷ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive

²⁰ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²¹ Directive, Enclosure 3, ¶ E3.1.14.

²² Directive, Enclosure 3, ¶ E3.1.15.

²³ Directive, Enclosure 3, ¶ E3.1.15.

²⁴ *Egan*, 484 U.S. at 531.

²⁵ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁶ Executive Order 10865, § 7.

²⁷ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

indebtedness or financial problems or difficulties.²⁸ 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.²⁹

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 supports a conclusion that Applicant has a history of financial problems. This shows inability or unwillingness to satisfy debts³⁰ and a history of not meeting financial obligations.³¹ The facts are more than sufficient to establish these disqualifying conditions.

There are six mitigating conditions to consider under Guideline F.³² Based on the evidence before me, the most pertinent are AG ¶¶ 20(b), (c), and (d). First, AG ¶ 20(b) applies because Applicant's financial problems are traceable to a lengthy period of unemployment during 2008–2009. This is a circumstance largely beyond his control. Moreover, he acted responsibly under the circumstances by obtaining other employment (his current job) to meet his financial obligations. Second, AG ¶ 20(c) applies because there are clear indications that his financial problems are in the process of being resolved and are under control. This is shown by the fact that the largest item of concern, the past-due mortgage loan, has been successfully resolved, and he has the financial means to repay the unresolved accounts as soon as practicable. And third, AG ¶ 20(d) applies because Applicant demonstrated a good-faith

²⁸ 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).

²⁹ AG ¶ 18.

³⁰ AG ¶ 19(a).

³¹ AG ¶ 19(c).

³² AG ¶¶ 20(a)–(f).

effort to resolve his financial problems.³³ Indeed, the evidence shows the following: (1) the past-due mortgage loan (along with the related Chapter 13 bankruptcy cases) has been resolved via a modification agreement; (2) his eldest daughter has assumed responsibility for the student loans and is making the required payments; (3) the collection accounts for the unpaid parking tickets will be resolved by his daughters; (4) the medical collection accounts are largely resolved; and (5) the unresolved consumer accounts will be resolved as soon as practicable. Moreover, he has the financial means to repay his creditors, and he is not financially overextended. Taken together, these circumstances qualify as a meaningful track record of actual debt reduction as well as financially responsible conduct. Weighing the evidence, I am persuaded that Applicant produced sufficient evidence to mitigate the security concern under Guideline F.

Under Guideline E for personal conduct,³⁴ the suitability of an applicant may be questioned or put into doubt due to false statements and credible adverse information that may not be enough to support action under any other guideline. The overall security concern under Guideline E is:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.³⁵

A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if, for example, the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

The issue here is whether Applicant made deliberately false statements when completing his security clearance application by failing to disclose his adverse financial history in response to five questions (Questions 26b, 26g, 26h, 26m, and 26n) on his 2009 security clearance application. In deciding this issue, I have had the opportunity to consider testimony from Applicant and assess his credibility and demeanor in light of the record evidence as a whole. Although he failed to report his financial problems in

³³ 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).

³⁴ AG ¶¶ 15–17 (setting forth the security concern and the disqualifying and mitigating conditions).

³⁵ AG ¶ 15.

response to multiple questions, I conclude his failure was not a deliberate omission, concealment, or falsification. The most likely explanation for his nondisclosure is a lack of knowledge about his finances or inattention or an honest mistake (or all three). I am not persuaded it was a deliberate effort to hide his adverse financial history.

In conclusion, I have no doubts or concerns about Applicant's judgment, reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I considered the whole-person concept.³⁶ I also weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. In doing so, I gave Applicant credit for his good employment record as a linguist working in support of the U.S. armed forces in Afghanistan during wartime. Accordingly, I conclude that Applicant met 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:	For Applicant
Subparagraphs 1.a–1.v:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a–2.e:	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

³⁶ AG ¶ 2(a)(1)–(9).