



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-04373
)
Applicant for Security Clearance)

Appearances

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

August 26, 2011

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 or difficulties. Although he has made honest efforts to address his multiple delinquent debts, he is still facing about \$30,000 in delinquent debt that he is unlikely to resolve anytime soon. At present, it is simply too soon to tell if Applicant’s problematic financial history is a thing of the past or a harbinger of things to come. 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 February 4, 2011, 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 April 28, 2011. The hearing took place June 8, 2011. The transcript (Tr.) was received June 21, 2011.

The record was kept open until June 29, 2011, to allow Applicant to submit additional documentary evidence. He made a timely submission, and those matters are marked and admitted without objections as Exhibit Q.

Findings of Fact

The SOR alleged 16 delinquent debts ranging in amounts from \$77 to \$16,129 for a total of about \$88,000. In Applicant's two-page reply the SOR, he admitted ten debts and denied six debts. His admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 29-year-old employee of a federal contractor. He has never married and has no children. He currently lives with his mother and pays her about \$500 monthly for rent. His educational background includes a bachelor's degree awarded in May 2003. He attended a relatively small, private college, and he paid for it by obtaining a student loan for each semester or every year for the four years he attended. He began his current employment as an interactive multimedia instructional specialist in February 2010. He is paid on a salary basis; for 2010 his annual salary was \$52,000; for 2011 his annual salary is \$53,300. He is seeking to obtain an industrial security clearance for this job.

Applicant has had an unstable employment history since finishing college in 2003.² He initially worked, on a commission basis, as a director of marketing for a small firm. He left that job in August 2003, when he was not being paid and felt he needed 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 contained in Enclosure 2 to the Directive.

² Exhibit 1.

job that paid on a regular basis to meet his financial obligations. He worked as a customer care assistant from August 2003 to September 2005. He left that job for a better opportunity and relocated to his current domicile. He worked as a help-desk technical supervisor from September 2005 to April 2009, when he was laid off after his job was outsourced to Mexico. Thereafter, he had a couple of temporary jobs, but he was essentially unemployed from April 2009 until he began his current job in February 2010, a period of about ten months. He received unemployment compensation or benefits during that period.

Applicant has denied six debts alleged in SOR ¶¶ 1.e, 1.l, 1.m, 1.n, and 1.p, for \$1,360, \$915, 2,695, \$752, and \$500, respectively, because he disputes that they are his debts. In furtherance of his disputes, he filed a police report in 2008 for the fraudulent use of his identity.³ The police report lists six accounts, to include the five debts at issue here, along with the amounts that match those here. He also sent letters to four of the five creditors disputing the debts.⁴ The sixth debt he disputes, SOR ¶ 1.f for \$2,845, stems from an apartment he once rented.⁵ He contends that he owes a lesser amount (about \$680 plus late fees of \$180). He has not paid, settled, or otherwise resolved that particular debt.

Concerning the ten debts Applicant admits owing, SOR ¶¶ 1.d, 1.j, and 1.k address three delinquent student loans in amounts of \$15,965, \$13,893, and \$16,129, respectively. He consolidated his multiple students loans into one loan with the same lender. In his post-hearing submission, he presented paperwork, dated June 23, 2011, from the lender showing that he owes a total of \$66,682 for seven loans consolidated into this account.⁶ The total includes \$66,442 in principal; the last payment of \$215 was made in May 2011; no payment is due at this time because the account is in forbearance from March 5, 2011, until August 5, 2011.

Of the remaining seven debts, which he admits, Applicant has paid or settled three for a total of about \$1,318. Four debts remain unresolved for a total of about \$26,869. These seven debts are discussed below.

The debt in SOR ¶ 1.a is for an unpaid judgment for \$779 owed to an apartment complex. It was settled in full for \$900 in February 2011.⁷

³ Exhibits 4 and D.

⁴ Exhibits C, J, K, and L.

⁵ Tr. 52–55; Exhibit 4.

⁶ Exhibit Q at 3–4.

⁷ Exhibit A.

The debt in SOR ¶ 1.b is for a \$5,494 charged-off account. Applicant explained this debt stems from an credit card account he openly jointly with his mother when he was 17 years old, and they are working to pay it off.⁸ It remains unresolved.

The debt in SOR ¶ 1.c is for a \$10,753 charged-off account.⁹ It stems from an auto loan in which the car was repossessed in 2008 after Applicant defaulted on the loan. In his post-hearing submission, he presented paperwork from the creditor showing a total deficiency owed of \$6,021 as of January 2009.¹⁰ It remains unresolved.

The debt in SOR ¶ 1.g is for a \$891 collection account.¹¹ It stems from an apartment he once rented. At hearing, there was some confusion about documentation related to the debt, but it appears that Applicant attempted to settle it for \$657 in February 2011.¹² It remains unresolved.

The two debts in SOR ¶¶ 1.h for \$77 and 1.i for \$520 are both collection accounts relating to the same overdrawn checking account.¹³ The debts were settled or satisfied in March 2011 for \$54 and \$364, respectively.¹⁴

The debt in SOR ¶ 1.o is for a \$14,463 collection account.¹⁵ The debt stems from an auto loan for a vehicle involved in an accident. The accident resulted in a total loss and then the insurance company denied coverage. Applicant admits that he owes something on the debt, but disputes the amount owed. It remains unresolved.

In addition to the debts in the SOR, Applicant presented documentary evidence concerning his current financial obligations on auto loans.¹⁶ He is continuing to make his monthly loan payment for a 2004 Jeep while that vehicle is pending expensive repairs. In the meantime, he purchased a 2011 Jeep for about \$23,500, and he is making \$500 monthly loan payments for that vehicle.¹⁷

⁸ Tr. 39–40.

⁹ Tr. 40–41.

¹⁰ Exhibit Q at 5.

¹¹ Tr. 53–55.

¹² Exhibit E.

¹³ Tr. 55.

¹⁴ Exhibits F, G, and M.

¹⁵ Tr. 57–58.

¹⁶ Exhibit O.

¹⁷ Tr. 96–97.

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.¹⁸ 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.”¹⁹ 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.²⁰ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²¹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²² The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²³ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁴ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁵ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁶

¹⁸ *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).

¹⁹ 484 U.S. at 531.

²⁰ Directive, ¶ 3.2.

²¹ Directive, ¶ 3.2.

²² ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²³ Directive, Enclosure 3, ¶ E3.1.14.

²⁴ Directive, Enclosure 3, ¶ E3.1.15.

²⁵ Directive, Enclosure 3, ¶ E3.1.15.

²⁶ *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.²⁷

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.²⁸ 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,²⁹ 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.³⁰ 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.³¹

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

²⁷ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁸ Executive Order 10865, § 7.

²⁹ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

³⁰ 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).

³¹ AG ¶ 18.

unwillingness to satisfy debts³² and a history of not meeting financial obligations³³ 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. 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;

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 considered all the mitigating conditions, and none, individually or in combination, are sufficient to overcome and mitigate the security concerns. Applicant's problematic financial history is due to a burdensome student loan debt as well as periods of underemployment and unemployment. At present, his financial situation is not as bleak as the SOR suggests. As established in the findings of fact, he has resolved 11 of the 16 debts. He has a reasonable basis to dispute five debts on the basis of identity fraud. The three student loans debts are now consolidated into one loan with one lender, and that account was in forbearance when the record closed. Likewise, of the debts admitted, he has paid or settled three for a total of about \$1,318. Applicant is entitled to mitigation on all these matters.

³² AG ¶ 19(a).

³³ AG ¶ 19(c).

Nevertheless, he is still in a difficult financial position. As established in the findings of fact, 5 of the 16 debts remain unresolved. He is disputing the debt in SOR ¶ 1.f for \$2,845, which stems from an apartment he once rented. He did not present any documentary evidence in support of this dispute, and it remains unresolved. Likewise, of the debts he admitted, four remain unresolved for a total of about \$26,869. Taken together, the evidence shows that his financial problems are ongoing because he still owes nearly \$30,000 in delinquent debt. He does not have a realistic plan in place to address these debts, and it is fair to conclude that he will not resolve them anytime soon. His financial problems are likely to become more difficult in August 2011, when the forbearance period ends on his consolidated student loan account with a balance of more than \$60,000. And he did not improve his financial situation by incurring a \$500 monthly loan payment to purchase a 2011 Jeep. At present, it is simply too soon to tell if Applicant's problematic financial history is a thing of the past or a harbinger of things to come.

To conclude, Applicant did not present sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns. In reaching this conclusion, I gave due consideration to the nine factors of the whole-person concept.³⁴ Accordingly, I conclude that 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant

³⁴ AG ¶ 2(a)(1)-(9).

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