



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



In the matter of:)
)
-----) ISCR Case No. 10-04402
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

January 6, 2012

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 consisting of five delinquent accounts for a total of about \$14,341. Although the debts are longstanding, and he has various explanations for them, none of the debts are paid, settled, or otherwise resolved. Applicant does not have a realistic plan in place to resolve them. Applicant failed to present sufficient evidence to overcome the security concerns stemming from his problematic financial history. Accordingly, as discussed below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on June 17, 2011, 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 answered the SOR and requested a hearing. The case was assigned to me August 24, 2011. The hearing took place October 20, 2011. The transcript (Tr.) was received October 28, 2011.

Findings of Fact

The SOR alleged five delinquent accounts in amounts ranging from \$281 to \$5,058 for a total of about \$14,341. In Applicant's reply to the SOR, he denied the debts with explanations. The following findings of fact are supported by substantial evidence.

Applicant is a 39-year-old employee of a federal contractor. He is married, and he and his wife have a two-year-old child and a four-year-old stepchild. His employment history includes honorable military service in the U.S. Navy during 1994–1999. He has been continuously employed as an aircraft mechanic by the same company since April 2007. He earns about \$26 per hour, and he estimated his gross wages for 2010 at about \$60,000. He is seeking an industrial security clearance for the first time, submitting an application in January 2010.²

As alleged in the SOR, and established by the documentary evidence,³ the five delinquent debts consist of the following: (1) an \$880 collection account; (2) a \$3,622 collection account; (3) a \$4,500 charged-off account; (4) a \$5,058 charged-off account; and (5) a \$281 collection account. He did not present any paperwork (e.g., account statements, offers of settlement, correspondence, etc.) showing the debts were paid, settled, or otherwise resolved.

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 Exhibit 1.

³ Exhibits 2–5.

After submitting his security clearance application, Applicant was interviewed in February 2010 as part of his background investigation.⁴ Each of the five debts was discussed during that interview, and Applicant provided an explanation for each debt. His hearing testimony concerning the debts was largely consistent with his interview. His explanations for the five delinquent debts are summarized as follows:

- The \$880 collection account stems from an apartment lease and claims for damages after Applicant vacated the apartment in 2008. He disputes the debt, claiming the amount is excessive.
- The \$3,622 collection account was incurred several years ago when Applicant entered into a cell phone contract with a former coworker and roommate. He claims that he got out of the account after about six months and it was transferred to the former coworker.
- The \$4,500 charged-off account was incurred several years ago when Applicant obtained an unsecured personal loan on behalf of the same former coworker. The understanding was that the coworker would repay Applicant for the loan.
- The \$5,058 charged-off account was incurred several years ago when Applicant cosigned an auto loan for a then girlfriend. The relationship did not endure, and the vehicle was repossessed when she stopped making payments. Applicant claims that his girlfriend assumed responsibility for the loan when they separated.
- The \$281 collection account was incurred fraudulently by the former coworker.

The five debts appear in a February 2010 credit report or a June 2011 credit report or both.⁵ Applicant did not offer any documentary evidence concerning the five debts or in support of his various claims and explanations. The five debts remain unresolved.

Applicant's plan, at this point, is to retain a credit repair firm to assist him in resolving the debts. To that end, he contacted such a firm by telephone, but has not yet retained their services. In addition, he sought assistance from his company's employee assistance program (EAP) to help him design an overall financial plan. He has met once with an EAP counselor, but nothing has been formalized or implemented.

Applicant described his overall financial situation as "pretty bad right now."⁶ He stated that he had about \$100 in the bank, although he usually maintains a balance of about \$1,500 to \$2,000. He anticipated taking a loan against his 401(k) account (the

⁴ Exhibit 2.

⁵ Exhibits 4 and 5.

⁶ Tr. 78.

estimated balance is about \$30,000) to catch up with his mortgage loan payments and other accounts in arrears.⁷

Law and Policies

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

⁷ Tr. 79–80.

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.

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 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.¹⁸ 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,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, or negligent in handling and safeguarding classified information within the defense industry.

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

¹⁸ Executive Order 10865, § 7.

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

²⁰ 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).

²¹ AG ¶ 18.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. The multiple delinquent debts raise security concerns. Taken together, these circumstances indicate 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, and the facts suggest financial irresponsibility as well.

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;²⁴

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.

²² AG ¶ 19(a).

²³ AG ¶ 19(c).

²⁴ 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).

I have considered all the mitigating conditions and none, individually or in combination, are sufficient to overcome and mitigate the security concerns.

The evidence of Applicant's problematic financial history 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 whole-person concept²⁵ and Applicant's favorable evidence, to include his years of honorable military service. It appears that in the past Applicant was too trusting or financially naive or both. As a result, he was taken advantage of by a coworker and a girlfriend. Nevertheless, accepting his undocumented explanations as true, he is most probably responsible if not liable for the debts except for the smallest debt of \$281 (SOR ¶ 1.e), which was incurred by fraud without his consent or knowledge. Moreover, he has done little to help himself. This is somewhat difficult to understand considering the debts are longstanding, and he was put on notice that the debts were of security concern during his February 2010 interview. Despite the passage of time since the interview, he has not formalized much less implemented a realistic plan to address and resolve the four largest debts by payment in full, by settlement, by disputing their validity, or by some other means.

Applicant's problematic financial history is unresolved and it is ongoing. And that history is inconsistent with the high standards that apply to those who are granted access to classified information. Based on the evidence before me, it is too soon to tell if or when Applicant will put his financial house in good order. 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.d:	Against Applicant
Subparagraph 1.e:	For Applicant

²⁵ 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