



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



In the matter of:)
)
-----) ISCR Case No. 10-04758
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

July 15, 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 history of financial problems or difficulties. Other than paying off a \$3,507 judgment in 2009, he has made virtually no progress during the last two years resolving the remaining three delinquent debts for more than \$25,000, and he does not have a realistic plan in place to do so. Applicant did not present sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns stemming from his history of financial problems. 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 20, 2010, 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 February 9, 2011. The hearing took place March 30, 2011. The transcript (Tr.) was received April 7, 2011.

The record was kept open for two weeks, until April 13, 2011, to provide Applicant an opportunity to submit additional documentary information in support of his case. To date, no such matters have been received.

Findings of Fact

In response to the SOR, Applicant admitted that he is indebted on four delinquent debts for a total of approximately \$30,000. His admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 40-year-old employee of a federal contractor. His educational background includes attending a technical school during 2001–2005, although he did not receive a degree. He began his current employment as an aircraft mechanic in March 2009, and he is seeking a security clearance in conjunction with this job.

His employment history includes military service in the U.S. Army and the Army National Guard. He served on active duty in the Army during 1994–2000. After his honorable discharge, he served in a national guard unit for about two years, ending in late 2002. While on active duty, he was trained as an aircraft mechanic and worked on Chinook helicopters.

Since 2002, Applicant has had several jobs and two periods of unemployment.² From August 2002 to January 2004, he worked as an assembler at a car manufacturing

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; Tr. 59–64.

company. He was laid off from the job and then unemployed from January 2004 to February 2005. He was a full-time student at the technical school during this period. He paid his school expenses and living expenses via the GI Bill, which he relied on as a paycheck. From February 2005 to November 2006, he worked as a broadband technician for a communications company. He left that job and relocated to another state where he worked for a technology company from November 2006 to January 2009, when he was laid off due to lack of work. He was unemployed for about two months before he began his current job, which required relocating to another state.

Applicant's first marriage ended in divorce in 1999. He has one child, a 13-year-old son, from that marriage. He pays \$400 monthly in child support for his son. He remarried in 2000, and he and his wife have three children, born in 2000, 2003, and 2006. His wife has a part-time job, about 30-hours weekly, working at home handling customer calls on behalf of a large hotel chain. Applicant was generally unfamiliar with his overall financial situation, as his wife is primarily responsible for bill paying and managing the household budget. For example, he did not know how much he or his wife earned last year.³ He and his wife purchased a home in August 2010.⁴ The purchase price was about \$175,000, and Applicant testified that they were able to obtain a mortgage loan and make the purchase, with no down payment, without difficulty.⁵ He did not present any documentary evidence concerning the mortgage loan.

Applicant completed a security clearance application in January 2010. In doing so, he disclosed six delinquent debts in response to the relevant question.⁶ He provided additional information about his indebtedness and his financial situation during a background interview in April 2010.⁷ He attributed his delinquent debts to a combination of periods of unemployment and underemployment in the last ten years, the birth of his three children, and expenses associated with job relocations. He reported essentially no progress on resolving his indebtedness in response to Agency interrogatories in September 2010.⁸

At hearing, Applicant admitted he was indebted to four creditors for delinquent debts alleged in the SOR for a total of approximately \$30,000. Three of the four remain unpaid and unresolved for more than \$25,000. The debts are discussed below.

³ Tr. 65–66.

⁴ Tr. 77–79.

⁵ This fact does not receive much weight because, based on this record, I have no idea how the mortgage lender determined that Applicant and his wife were creditworthy and approved for the mortgage loan.

⁶ Exhibit 1.

⁷ Exhibit 3.

⁸ Exhibit 2.

The debt in SOR ¶ 1.a is for an unpaid \$3,507 judgment that was taken against Applicant in November 2008.⁹ It was satisfied in full in March 2009.¹⁰

The debt in SOR ¶ 1.b is for a \$1,038 collection account. The debt originated as a credit card account, Applicant has made no payments on it in the recent past, and he does not recall when the last payment was made.¹¹ It remains unpaid and unresolved.

The debt in SOR ¶ 1.c is for a \$2,679 collection account. The debt appears to have originated with another creditor.¹² Applicant or his wife have attempted to call the creditor, but have not made any material progress obtaining information about the debt.¹³ He has made no payments on it in the recent past. It remains unpaid and unresolved.

The debt in SOR ¶ 1.d is for a \$22,883 collection account. The debt originated as a credit card account. Although Applicant agrees he is liable, he disputes the amount owed, contending that the outstanding balance was less than \$10,000, with the remainder based on excessive fees and interest.¹⁴ He did not present any documentary evidence concerning this debt or his dispute. But a February 2010 credit report does have an entry of “consumer disputes this account information” for this debt.¹⁵

Other than the satisfaction of judgment,¹⁶ Applicant did not submit any documentary evidence concerning the debts or efforts made to repay or otherwise resolve the debts. And he did not submit any documentary evidence concerning his overall financial situation or his ability to repay the delinquent debts.

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

⁹ Exhibit 4.

¹⁰ Exhibits A and 6.

¹¹ Tr. 47–48.

¹² Exhibits 5 and 6.

¹³ Tr. 49–52.

¹⁴ Tr. 52–55.

¹⁵ Exhibit 6.

¹⁶ Exhibit A.

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.¹⁷ 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.”¹⁸ 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.¹⁹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁴ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁵ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁶

The AG set forth the relevant standards to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions and mitigating conditions

¹⁷ *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).

¹⁸ 484 U.S. at 531.

¹⁹ Directive, ¶ 3.2.

²⁰ Directive, ¶ 3.2.

²¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²² Directive, Enclosure 3, ¶ E3.1.14.

²³ Directive, Enclosure 3, ¶ E3.1.15.

²⁴ Directive, Enclosure 3, ¶ E3.1.15.

²⁵ *Egan*, 484 U.S. at 531.

²⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.²⁷ 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,²⁸ 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.²⁹ 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.³⁰

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, and these matters are ongoing. This raises security concerns because it indicates inability or unwillingness to satisfy debts³¹ and a history of not meeting financial obligations³² within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions.

²⁷ Executive Order 10865, § 7.

²⁸ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁹ 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).

³⁰ AG ¶ 18.

³¹ AG ¶ 19(a).

³² AG ¶ 19(c).

There are six mitigating conditions to consider under Guideline F. 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.

The most pertinent here are ¶¶ 20(b) and 20(d). I have considered all the mitigating conditions in light of the evidence as a whole, and none, individually or in combination, is sufficient to rebut, explain, extenuate, or mitigate the security concerns stemming from Applicant's history of financial problems or difficulties.

Except for a two-month period in early 2009, Applicant has had full-time employment since February 2005, a period of more than five years. That should have been enough time for Applicant to recover from his unemployment during 2004–2005, when he was a full-time student supporting himself and his family via the GI Bill. To his credit, he paid off the \$3,507 judgment in March 2009. But in the last two years, Applicant has done virtually nothing to repay or resolve the remaining three delinquent debts for more than \$25,000. What is missing here is responsible conduct coupled with a good-faith effort during the last two years to repay or otherwise resolve the remaining three delinquent debts. Had he, for example, paid or settled the two smaller debts and made some sort of documented effort to repay, settle, or otherwise resolve the largest debt, I would have been inclined to decide this case in his favor. Instead, there is no documentary evidence of attempts to negotiate settlements, there is no documentary evidence of a pattern of payments made as part of a realistic plan to repay the debts, and there is no documentary evidence of even a token payment in the past two years.

Applicant's good intentions and promises to pay in the future are insufficient to mitigate the security concerns raised by his ongoing financial problems.

To conclude, the evidence as a whole justifies current doubts about Applicant's 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 gave due consideration to the whole-person concept³³ and Applicant's favorable evidence, to include his honorable military service. Nevertheless, Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

Formal Findings

The formal findings on the SOR allegations are as follows:

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

³³ AG ¶ 2(a)(1)–(9).