



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



In the matter of:)	
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)	ISCR Case No. 10-06686
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank Jr., Esq., Department Counsel
For Applicant: *Pro se*

04/19/2012

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to 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 federal tax liens and more than \$100,000 in back taxes owed to the IRS. He has made payments to the IRS, and he currently has an offer in compromise pending with the IRS. Looking forward, it is too soon to predict if or when he will resolve his federal tax problems. Applicant failed to present sufficient evidence to overcome the security concerns stemming from his problematic financial history. Accordingly, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on or about October 20, 2011, the Defense Office of Hearings and Appeals (DOHA) 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. The SOR is similar to a complaint, and it detailed the reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant timely answered the SOR and requested a hearing. The hearing took place March 12, 2012. The transcript (Tr.) was received March 23, 2012.

The record was kept open to allow Applicant to submit documentary evidence in addition to his Exhibits A–P, which were admitted at hearing. He made a timely post-hearing submission and those matters are admitted, without objections, as follows:

- Exhibit Q—two letters of recommendation;
- Exhibit R—documents related to the state tax matter;
- Exhibit S—documents related to the federal tax matter;
- Exhibit T—document related to a 401(k) loan;
- Exhibit U—military retiree account statement;
- Exhibit V—two recent paychecks;
- Exhibit X—copy of nursing license for his wife;
- Exhibit Y—copy of a bachelor’s degree, awarded in 2009, for his daughter; and
- Exhibit Z—credit report, dated March 2, 2012.

Ruling on Procedure

Under ¶ E3.1.17 of the Directive, ¶ 1.f of the SOR was amended to conform with the evidence admitted during the hearing; namely, to reflect the correct state jurisdiction in which Applicant was indebted on a state tax lien for about \$5,000.²

Findings of Fact

The SOR alleged the following six matters: (1) four federal tax liens filed against Applicant in the amounts of \$76,573, \$12,024, \$36,024, and \$664; (2) a past-due account for \$502; and (3) a state tax lien filed against Applicant in the amount of \$5,000.

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 Tr. 14–18; 82–83.

In Applicant's reply to the SOR, he admitted the federal tax matters and the past-due account, but he denied the state tax matter, explaining he had no such debt with that particular state. His admissions are accepted and adopted and incorporated herein as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 64-year-old employee of a federal contractor. He has been continuously employed by that company since 1999. He is seeking to retain a security clearance for his current job as an engineering technician. His employment history includes nearly 24 years of active duty military service in the U.S. Army, which concluded in 1991 with his retirement as a senior noncommissioned officer (pay grade E-7).³ He served as a communications electronics maintenance chief and as an infantryman during his more than two decades of honorable military service. His educational background includes a bachelor's degree in computer information systems awarded in 1998.⁴

Applicant completed a security clearance application in March 2010, and it is that application under review here.⁵ In completing the application, he reported his federal tax matters as well as a state tax lien filed by a state department of revenue. Also in March 2010, he was interviewed as part of his background investigation.⁶ He explained during the interview that the tax liens were the result of reduced income, student loans that he was paying, and that he had insufficient income to pay his taxes. He discussed and admitted the three federal tax liens for \$76,573, \$12,024, and \$36,024. He stated that he was working with the IRS to resolve the matters. There was no mention of the federal tax lien for \$664. He also discussed and admitted the state tax lien for about \$5,000 for tax year 2008. He explained he had been making monthly payments of \$300 to \$400 and intended to pay it in full.

At present, Applicant has resolved three of the six matters alleged in the SOR. First, the federal tax lien filed in February 2006 for \$664 is resolved, because it was paid in September 2006 and then released.⁷ In addition, although not alleged in the SOR, the documentary evidence shows a federal tax lien filed in 2006 for \$14,846 was released in July 2007.⁸ Second, the past-due account for \$502 is resolved. The account was paid in full in February 2011, before the SOR was issued.⁹ Third, the state tax lien for about

³ Exhibit A.

⁴ Exhibit D.

⁵ Exhibit 1.

⁶ Exhibit 2.

⁷ Exhibit Z (public records section of credit report at page 2 of 3); Exhibit 3 at 3-4.

⁸ Exhibits S, Z, 3, and 4.

⁹ Exhibit I.

\$5,000 is resolved.¹⁰ Applicant's employer received notice of the tax lien in December 2009, and the notice indicated an amount due of \$8,946. A garnishment or wage attachment action started the same month resulting in semimonthly deductions from his paycheck. His employer received notice that the state tax lien was released in August 2010, before the SOR was issued. The information from Applicant's employer is corroborated by credit reports from March 2010, March 2011, and March 2012, none of which report a state tax lien for any amount.¹¹

For the three unresolved federal tax liens in the amounts of \$76,573, \$12,024, and \$36,024, Applicant is attempting to resolve these matters by working with the IRS. He has paid approximately \$13,000 to the IRS during 2011 and 2012.¹² He proposed an offer in compromise to the IRS to settle the back taxes for \$20,000.¹³ The IRS responded to him in August 2011, indicating that they had received his offer in compromise, but required additional paperwork before it could be further considered.¹⁴ The most recent information from the IRS is a letter, dated January 18, 2012, indicating the offer in compromise had been assigned for investigation.¹⁵ The letter also tasked Applicant to provide additional information and documentation with a deadline of February 17, 2012. It was not established at hearing if Applicant had met the deadline. Applicant estimates he owes the IRS about \$160,000 in back taxes.¹⁶ At present, his offer in compromise is pending with the IRS.

Law and Policies

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

¹⁰ Exhibit R.

¹¹ Exhibits 3, 4, and Z.

¹² Exhibits B, C, P, and S.

¹³ Exhibit E.

¹⁴ Exhibit G.

¹⁵ Exhibit H.

¹⁶ Tr. 53.

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.

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 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.²⁷ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

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).

²⁷ Executive Order 10865, § 7.

Discussion

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, 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 or difficulties. The federal and state tax matters along with the past-due account raise security concerns. These matters indicate 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, and the facts also suggest a degree of financial irresponsibility.

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;

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

²⁹ 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).

³⁰ AG ¶ 18.

³¹ AG ¶ 19(a).

³² AG ¶ 19(c).

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;³³

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.

None of the mitigating conditions, individually or in combination, are sufficient to overcome and mitigate the security concerns stemming from Applicant's largely unresolved and ongoing federal tax liens and back taxes. With that said, the federal tax lien for \$664, the past-due account for \$502, and the state tax lien for about \$5,000 are resolved and no longer a concern. Accordingly, SOR ¶¶ 1.d–1.f are decided for Applicant.

For reasons not entirely clear from the record, Applicant fell behind on his federal income tax obligations. The result was five tax liens, three of which are still in effect for more than \$100,000 in back taxes. He has not ignored this problem, as shown by the release of two of the five liens and by paying about \$13,000 during 2011–2012. Nevertheless, his offer in compromise is pending, the IRS is under no obligation to accept his offer, and the likelihood of the IRS accepting it is unknown at this time. Applicant is facing more than \$100,000 in back taxes owed to the IRS, and this is a problem that will not be easily solved. Looking forward, it is too soon to predict if or when he will resolve his federal tax problems. Indeed, during the hearing, Applicant did not demonstrate that he had a firm command of the details of his financial situation. Accordingly, SOR ¶¶ 1.a–1.c are decided against Applicant.

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).

The evidence of Applicant's ongoing federal tax problems 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 concept.³⁴ In particular, I gave Applicant substantial credit for his many years of honorable military service, his good employment record, and his favorable letters of recommendation. Although these matters weigh in his favor, they are not enough to mitigate and overcome the security concerns. Based on the evidence before me, 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.c:	Against Applicant
Subparagraphs 1.d–1.f:	For 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

³⁴ AG ¶ 2(a)(1)–(9).