



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



In the matter of:)
)
-----) ISCR Case No. 10-10444
)
Applicant for Security Clearance)

Appearances

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

November 10, 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 Applicant has a history of financial problems or difficulties consisting of six collection or charged-off accounts totaling about \$32,000. The accounts are unpaid and unlikely to be resolved anytime in the near future as he has taken no action to do so. Applicant failed to present sufficient evidence to overcome the security concerns stemming from his problematic financial history. 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 May 16, 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 timely answered the SOR and requested a hearing. The case was assigned to me August 3, 2011. The hearing took place September 8, 2011, via video teleconference. The transcript (Tr.) was received September 15, 2011.

Findings of Fact

The SOR alleged seven collection or charged-off accounts, ranging in amounts from \$617 to \$9,368, for a total of about \$33,076. In Applicant's reply to the SOR, he admitted the seven debts. His admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 44-year-old employee of a federal contractor. His first marriage ended in divorce in 2007, and he married his current wife the same year. They have no children of their own, but their household includes Applicant's teenage child and his wife's two teenage children. He is employed as an avionics engineer for a helicopter company. He is seeking to retain a security clearance at the present level of access.

Applicant's employment history includes honorable active duty service in the U.S. Air Force during 1985–1998. He then worked as a manager of a camp run by a religious organization. He left that employment in 2003, when he began his current job. His educational background includes a bachelor's degree awarded him in 2009, and he is currently pursuing a master's degree from a school of engineering. Based on witness testimony and multiple letters of recommendation, Applicant has a good employment record with his current employer.² He is regarded as a hardworking employee who is reliable and trustworthy, and who possesses strong integrity.

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 Exhibits F, G, H, and I.

Along with Applicant's admissions to the SOR, recent credit reports³ establish the collection and charged-off accounts.⁴ He attributes the collection and charged-off accounts to his separation from his first wife in 2006 and resulting divorce in 2007.⁵ His first wife left him with their children in late 2006 and quit her job at about the same time. Applicant went from a two-income household to supporting his children and paying the same bills on his income alone. Due to the resulting financial strain, he decided that any unsecured debt or credit card debt would have to go unpaid, and he would continue to pay his mortgage loan and other necessary expenses.⁶ He informed his company's security office that he was seeking a divorce and would have some financial difficulties as a result.

Applicant's divorce became final in May 2007, and he remarried in August 2007. As a result, the lost income was essentially replaced by his second wife's income, although she brought her own financial obligations and debts to the marriage. Since their marriage in 2007, their joint gross income has increased from about \$85,000 annually to the current level of \$130,000 to \$140,000 annually.⁷

The divorce decree addressed, among other things, the division of property and the division of debt.⁸ In particular, the divorce decree awarded Applicant's ex-wife a 2006 Ford Escape and assigned her the debt on the loan for that vehicle. This is the debt alleged in SOR ¶ 1.g, which was charged off in the amount of \$1,174. Otherwise, the divorce decree does not establish that Applicant's ex-wife is responsible for the debts in SOR ¶¶ 1.a–1.f. To date, these six debts, which total approximately \$31,902, remain unpaid. After his remarriage in 2007, he decided to take no action on these debts after concluding that doing so would not result in a financial benefit to him or improve his credit history as the accounts were already in a collection or charged-off status.⁹

³ Exhibits 3 and 4.

⁴ To charge off is simply a decision by a creditor to treat an unpaid debt as a bad debt. As a bad debt, the debt is deemed uncollectible and may be deductible for tax purposes. But while a charged-off account is considered to be written off as uncollectible by the creditor, the debt is still legally valid and remains such after being charged off. The creditor retains the legal right to collect the full amount of the debt for whatever period is allowed by law. If a charged-off account has been paid in full or settled, it will be listed as such on the consumer's credit report.

⁵ Indeed, in his opening statement, which is not evidence, Applicant remarked that he intended to show that the sudden loss of his spouse's income was the sole reason for the majority of his delinquent debts. Tr. 31.

⁶ Tr. 42.

⁷ Tr. 82–84.

⁸ Exhibit A.

⁹ Tr. 45–46.

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.¹⁰ 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.”¹¹ 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.¹² An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁴ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁷ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁸

¹⁰ *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).

¹¹ 484 U.S. at 531.

¹² Directive, ¶ 3.2.

¹³ Directive, ¶ 3.2.

¹⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁵ Directive, Enclosure 3, ¶ E3.1.14.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ *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.¹⁹

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.²⁰ 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,²¹ 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.²² 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.²³

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information within the defense industry.

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

²⁰ Executive Order 10865, § 7.

²¹ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²² 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).

²³ AG ¶ 18.

The evidence here supports a conclusion that Applicant has a history of financial problems or difficulties. The six collection or charged-off accounts for about \$32,000 raise security concerns because they indicate inability or unwillingness to satisfy debts²⁴ and a history of not meeting financial obligations²⁵ 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;²⁶

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.

²⁴ AG ¶ 19(a).

²⁵ AG ¶ 19(c).

²⁶ 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 especially considered the mitigating conditions at AG ¶¶ 20(a), 20(b), and 20(e), and none, individually or in combination, are sufficient to overcome and mitigate the security concerns.

AG ¶ 20(a) applies in part because Applicant's financial problems occurred under the unusual circumstances of his separation and divorce. He does not receive full credit under this mitigating condition because nearly \$32,000 in delinquent debt remains outstanding and he has taken no action to resolve the debts.

AG ¶ 20(b) applies in part due to Applicant's separation and divorce, which were circumstances largely beyond his control. But he does not receive full credit under the mitigating condition. His initial decision during 2006–2007 to focus on paying his mortgage loan and other necessary expenses to support his family, and not pay unsecured credit card debt, was reasonable given the loss of income. That period is long past, however, and he has taken no action to make good on his delinquent debts. Moreover, his rationale for his subsequent inaction is flawed, because his focus is limited to taking action for his own financial benefit and ignores his obligations to his creditors. The fact that a debt was charged off does not extinguish his legal obligation to repay the creditor.

AG ¶ 20(e) applies in full to one of the SOR debts. Applicant presented reliable documentary evidence that his ex-wife was responsible for the debt associated with the 2006 Ford Escape. Accordingly, SOR ¶ 1.g is decided for Applicant.

To conclude, the evidence of Applicant's financial 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 concept²⁷ and Applicant's favorable evidence, which included a good employment record. I gave substantial weight to Applicant's marital problems during 2006–2007, and the financial decisions he felt he had to make during that period. I also considered Applicant's post-divorce attempts to recover medical expenses for his children from his first wife.²⁸ With that said, had he made an effort to repay his creditors once he remarried and recovered financially, this case may have had a different outcome. But at this time, Applicant's problematic financial history (e.g., six collection or charged-off accounts for about \$32,000) is wholly unresolved and ongoing. That history is simply inconsistent with the standards that apply to those who are granted access to classified information. Perhaps in the future when Applicant has made a good-faith effort to repay or resolve these debts, or there are clear indications that his financial problems are being resolved or under control, he can reapply for a security clearance with the sponsorship of an employer. Based on the record before me,

²⁷ AG ¶ 2(a)(1)–(9).

²⁸ Exhibits B, C, D, and E.

I conclude 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.f:	Against Applicant
Subparagraph 1.g:	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