



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



In the matter of:)
)
-----) ISCR Case No. 11-00031
)
Applicant for Security Clearance)

Appearances

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

September 14, 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 eight accounts totaling about \$271,000 in bad debt, the vast majority of which is unresolved. 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 April 20, 2011, the Defense Office of Hearings and Appeals (DOHA) 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 June 10, 2011. The hearing took place August 3, 2011. The transcript (Tr.) was received August 18, 2011.

I kept the record open until August 17, 2011, to allow Applicant to submit documentary evidence of his good employment record. He made a timely submission, and those matters are admitted without objections as Exhibit A.

Findings of Fact

The SOR alleged eight collection, charged-off, past-due, or foreclosure accounts, ranging in amounts from \$101 to \$129,000 for a total of about \$271,000. In Applicant's reply to the SOR, he admitted seven of the eight debts and he denied the smallest debt. His admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 32-year-old employee of a federal contractor. He is married, and he and his wife have four children, ages 12, 3, 22 months, and 8 months. His 22-month-old daughter suffers from cerebral palsy. He is employed as an electronics technician. He is seeking to retain a top-secret security clearance for this job.

Applicant's employment history includes approximately eight years of active duty military service in the U.S. Air Force, serving as a communications computer operator. He was honorably discharged, and he has been continuously employed by the same federal contractor since December 2006. His current annual salary is about \$56,244. His wife is employed outside the home, earning \$12.50 per hour working about 30 hours weekly.

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.

In April 2010, Applicant self-reported having financial problems to his company's facility security officer.² He traces his financial problems to a combination of obtaining a home-equity loan (a second mortgage) of about \$120,000 in late 2006 or early 2007 as well as a separation from his wife for about 12 months during 2007–2008. At the time, the local real estate market was booming. All the money was spent in about 15 months on a combination of things, such as his music business, cars, household items, and gifts of money to family members.³

By 2008, Applicant became delinquent on various accounts, to include the mortgage loans. He unsuccessfully tried to refinance his mortgage, but was denied because the value of the home had declined due to the bust in the local real estate market. In approximately late 2009, he received a notice of default on the mortgage loan. He and his family relocated to their current living quarters in February 2010. He received a Substitute Form 1099-A, dated January 2010, from the mortgage lender indicating an outstanding principal balance of \$101,066 (on the \$129,113 mortgage loan) with a fair market value of \$80,198.⁴ A May 2010 credit report indicates that the creditor grantor reclaimed the collateral, and the account balance and amount past due are both zero.⁵

The other seven delinquent debts remain unresolved. He did not present any documentary evidence showing he has paid, settled, reduced the balance owed, or otherwise resolved those seven debts. He failed to present any paperwork to verify his claim that he paid the smallest debt of \$101. He is meeting his current living expenses, but he has no savings or money in the bank, no investment accounts, and no real estate assets. He has consulted a bankruptcy attorney, but lacks the money to retain the services of an attorney.

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.

² Exhibit 4.

³ Exhibit 7.

⁴ Exhibit 7.

⁵ Exhibit 5.

It is well-established law that no one has a right to a security clearance.⁶ 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.”⁷ 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.⁸ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁰ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹¹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹² In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹³ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁴ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁵ Substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.”¹⁶

⁶ *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).

⁷ 484 U.S. at 531.

⁸ Directive, ¶ 3.2.

⁹ Directive, ¶ 3.2.

¹⁰ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹¹ Directive, Enclosure 3, ¶ E3.1.14.

¹² Directive, Enclosure 3, ¶ E3.1.15.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ *Egan*, 484 U.S. at 531.

¹⁵ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁶ Directive, Enclosure 3, ¶ E3.1.32.1.

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.¹⁷ 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,¹⁸ 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.¹⁹ 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.²⁰

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 here supports a conclusion that Applicant has a history of financial problems or difficulties. This history raises security concerns because it indicates inability or unwillingness to satisfy debts²¹ and a history of not meeting financial

¹⁷ Executive Order 10865, § 7.

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

¹⁹ 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).

²⁰ AG ¶ 18.

²¹ AG ¶ 19(a).

obligations²² 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;²³

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. It is probable that Applicant's financial problems are due, in part, to the decline in the local real estate market and the 12-month period of marital separation, which increased his financial obligations and expenses. These were circumstances largely beyond his control. In addition, although he did not document it, I am certain that his child who

²² AG ¶ 19(c).

²³ 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).

suffers from cerebral palsy places additional financial strain on him. Nevertheless, the evidence supports a conclusion that his financial house is in serious disrepair. He has done little to address bad debt and he lacks a realistic plan to do so, although he has considered bankruptcy. Given these circumstances, 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, the evidence of Applicant's financial problems, past and present, 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 gave due consideration to the whole-person concept²⁴ and Applicant's favorable evidence. In particular, I gave substantial weight to Applicant's honorable military service in the Air Force. And I gave substantial weight to his good employment record.²⁵ But Applicant's problematic financial history is unresolved and ongoing, and that history is simply inconsistent with the high 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 his bad debt, 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, 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.h:	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

²⁴ AG ¶ 2(a)(1)–(9).

²⁵ Exhibit A.