



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



In the matter of:)	
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)	ISCR Case No. 11-00034
Applicant for Security Clearance)	

Appearances

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

July 27, 2011

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. The evidence shows he has a history of financial problems or difficulties. He defaulted on first and second mortgage loans due to a year-long period of unemployment and subsequent employment at a greatly reduced salary. These were circumstances largely beyond his control, and he acted responsibly under the circumstances. At present, there are clear indications that his past financial problems are resolved and under control. Looking at the case as a whole, Applicant’s financial problems were situational and atypical, and not due to a long-term pattern of financial irresponsibility or frivolous spending. Accordingly, as explained below, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on March 14, 2011, 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. The SOR alleged a charged-off debt of about \$100,000 stemming from a second mortgage loan, a charged-off debt of about \$13,775 stemming from a credit card account, and a pending Chapter 7 bankruptcy case.

Applicant answered the SOR and requested a hearing. The case was assigned to me April 28, 2011. The hearing took place June 7, 2011. The transcript (Tr.) was received June 20, 2011. The record was kept open for 30 days, until July 7, 2011, to provide Applicant an opportunity to submit additional documentary information in support of his case. He made a timely submission, and those matters are admitted, without objections, as Exhibits D and E.

Findings of Fact

Applicant is a 49-year-old employee of a federal contractor. He has a bachelor's degree in mechanical engineering, awarded in 1985, when he began working in his field. He began his current employment as a mechanical engineer in January 2008, and his current annual salary is about \$65,000. His job involves the designing and building of mobile-surveillance equipment, launch platforms, and training modules. He is seeking an industrial security clearance for the first time.

In approximately late 1999, Applicant accepted a job offer as a project engineer. The job required him to make a cross-country move. He began the job in January 2000 and worked there to about January 2007. During this time, Applicant had built a custom-made house that he occupied from September 2001 until he vacated it in about December 2006. His intent or plan was to live in the house until he retired and then beyond, although he took into account the possibility of having to sell it. He obtained two mortgage loans against the property. Earning more than \$100,000 annually, Applicant had no trouble paying the loans and meeting his other financial obligations. This changed in late 2006, when the company announced plans for a layoff due to a downturn in the newsprint business.

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.

Initially, the company sought volunteers, and Applicant accepted a buyout that included \$10,000 in severance pay. He did so because he had concerns that the company's newsprint business was in jeopardy. In addition, he was engaged to be married for the first time in February 2007. His bride was located some distance away, and he reasoned he would move to her location where she was employed instead of vice versa. His concerns proved correct, as the company's newsprint business ceased operations within the next 6 to 12 months.

Applicant was unemployed from January 2007 to January 2008. He did not receive unemployment compensation because he accepted the buyout offer. When he began his current job in January 2008, he did so at a greatly reduced salary from his previous job, which paid about \$120,000 annually. In contrast, his gross income for 2010 was about \$60,000. He managed to make timely payments on the first mortgage loan through November 2008; he caught up and was current for February and March 2009; and he was thereafter unable to make payments.² He did so by withdrawing money from a 401(k) account. Likewise, he made timely payments on the second mortgage loan through July 2009, when he could no longer make the payments.³ Thereafter, he attempted, without success, a short sale and a federal loan modification program.

Applicant completed a security clearance application in August 2010.⁴ In response to the relevant questions about his financial history, he disclosed the two defaulted mortgage loans and a past-due credit card account for \$13,775. He provided additional information about these matters during a September 2010 interview as part of his background investigation.⁵ He disputed the delinquent credit card account for \$13,775, and explained in great detail the steps he had taken to dispute it, to include filing a fraud report with the police department. This debt does not appear in his bankruptcy paperwork discussed below. He also explained he had a second fraudulent credit card account with a different creditor.

In about January 2011, his current employer notified Applicant that they had received a wage garnishment stemming from a default judgment he was unaware of until then. He sought legal counsel, who advised him that a Chapter 7 bankruptcy case was prudent in light of his circumstances. The bankruptcy paperwork was filed in January 2011, and the court granted Applicant a discharge on June 10, 2011.⁶ At hearing, Applicant testified that he thought the wage garnishment stemmed from a judgment on the second mortgage loan, but the bankruptcy paperwork suggests it was

² Exhibit A; Tr. 64–66.

³ Exhibit A; Tr. 66.

⁴ Exhibit 1.

⁵ Exhibit 4.

⁶ Exhibits 5, 6, 7, 8, C, and D.

a \$11,742 judgment for a debt on a credit card account.⁷ This may be the second fraudulent credit card account, although it appears as a credit card account in good standing, with a balance of \$11,742, in a August 2009 credit report.⁸ It does not appear in the September 2010 credit report, the January 2011 credit report, or the June 2011 credit report.⁹ Likewise, none of the credit reports reflect a judgment. As a result, I am unable to determine the nature of the debt tied to the garnishment.

Included in the bankruptcy were claims based on the first and second mortgage loans.¹⁰ Applicant also reaffirmed a debt associated his vehicle as well as a debt associated with a half interest in his current residence, where he and his wife reside.¹¹ He now owns the vehicle outright.¹²

Of the four credit reports in evidence,¹³ the most recent is from June 30, 2011, and it provides up-to-date information about Applicant's overall financial condition.¹⁴ In addition to reporting the June 2011 bankruptcy discharge, it reports six adverse accounts, all of which have zero balances. The six accounts include the two mortgage loans (the second is described as a home-equity loan) and credit card account alleged in the SOR that he disputes. The fourth account is the loan for the recently paid off vehicle. And the fifth and sixth accounts are two other credit card accounts. There are no adverse accounts that reflect a balance due. The credit report also discloses 26 satisfactory accounts, of which 2 accounts have small balances, 24 have zero balances, and none of the 26 accounts reflect a history of late payments.

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.

⁷ Tr. 48–52; Exhibit 6 (Schedule F, claim for \$11,742).

⁸ Exhibit A at 4.

⁹ Exhibits 2, 3, and E.

¹⁰ Exhibit 6.

¹¹ Exhibit 7.

¹² Exhibit B.

¹³ Exhibits 2, 3, A, and E.

¹⁴ Exhibit E.

It is well-established law that no one has a right to a security clearance.¹⁵ 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.”¹⁶ 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.¹⁷ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁸

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁰ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²¹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²² In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²³ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁴

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 facts and circumstances, the pertinent criteria and adjudication factors, and the whole-person concept.

¹⁵ *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).

¹⁶ 484 U.S. at 531.

¹⁷ Directive, ¶ 3.2.

¹⁸ Directive, ¶ 3.2.

¹⁹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁰ Directive, Enclosure 3, ¶ E3.1.14.

²¹ Directive, Enclosure 3, ¶ E3.1.15.

²² Directive, Enclosure 3, ¶ E3.1.15.

²³ *Egan*, 484 U.S. at 531.

²⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.²⁵ 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,²⁶ 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.²⁷ 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.²⁸

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. This raises security concerns because it indicates inability or unwillingness to satisfy debts²⁹ and a history of not meeting financial obligations³⁰ 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:

¶ 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

²⁵ Executive Order 10865, § 7.

²⁶ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁷ 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).

²⁸ AG ¶ 18.

²⁹ AG ¶ 19(a).

³⁰ AG ¶ 19(c).

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)—conditions beyond one's control, ¶ 20(c)—clear indications that the problem is resolved or under control, and ¶ 20(e)—reasonable basis to dispute.

Applicant's problematic financial history is due to a year-long period of unemployment from January 2007 to January 2008, and then his subsequent employment at a greatly reduced annual salary. These were are conditions largely beyond his control. He acted responsibly under the circumstances by seeking gainful employment and using money from his 401(k) account to pay the two mortgage loans. Although he has not received financial counseling beyond what occurs during bankruptcy, there are clear indications that the problems are resolved and under control. Those indications are the recently completed Chapter 7 bankruptcy case relieving him from liability for the two mortgage loans, which was clearly the gravamen of the bankruptcy case. In addition, he disputed the \$13,775 credit card debt due to identity theft, which he detailed during his background interview. It appears to be resolved because the June 2011 credit report shows it has a zero balance. Accordingly, the three matters alleged in the SOR are resolved and he has no further liability or exposure on them. Looking at the case as a whole, Applicant's financial problems were situational and atypical, and not due to a long-term pattern of financial irresponsibility or frivolous spending.

To conclude, Applicant presented sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns, and I am persuaded that he will exercise the required good judgment, reliability, and trustworthiness. In reaching this conclusion, I gave due

consideration to the nine factors of the whole-person concept.³¹ Accordingly, I conclude that Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for Applicant.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.c:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge

³¹ AG ¶ 2(a)(1)–(9).