



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



In the matter of:)	
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)	ISCR Case No. 11-00421
)	
Applicant for Security Clearance)	

Appearances

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

04/03/2012

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. He defaulted on two credit card accounts and they were placed for collection for \$11,000 and \$6,032, respectively. The creditor for the lesser amount has obtained a judgment against him. Applicant is now seeking relief from these and other debts via a Chapter 7 bankruptcy case, which was filed in December 2011. His bankruptcy case is pending with the court. His bankruptcy paperwork indicates a negative cash flow of several hundred dollars per month. It is too soon to tell if or when his financial situation will stabilize. Applicant failed to present sufficient evidence to overcome the security concerns stemming from his problematic financial history. Accordingly, as discussed below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on or about October 27, 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 reasons 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 January 17, 2012. The hearing took place March 14, 2012. The transcript (Tr.) was received March 29, 2012.

Findings of Fact

The SOR alleged two accounts placed for collection for \$11,000 and \$6,032, respectively. In Applicant's reply to the SOR, he admitted the factual allegations, indicated he had initiated bankruptcy proceedings, and provided additional explanations. 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 35-year-old employee of a company that provides security monitoring and surveillance services. He has been continuously employed by that company since 1998. He is seeking to retain a security clearance for his current job, which pays him about \$46,000 annually.

Applicant has never married and has no children. His mother is deceased, and his father has lived with him since receiving a diagnosis of throat cancer. His father's illness is now in remission, and his father has been able to pay for his past medical expenses via health insurance. From time to time, his father provides Applicant money when he falls short.

Applicant had a long-term relationship with a girlfriend during 1998–2005. During that period, they bought the home in which Applicant now resides. They bought the home with a joint mortgage loan, but she did not participate in repaying the loan. The loan and house were placed in Applicant's name after the relationship ended.

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.

Applicant completed a security clearance application in August 2010, and it is that application which is under review here.² In completing the application, he reported that he had been delinquent on debts (180-days delinquent and currently 90-days delinquent), and he disclosed the two credit card accounts at issue. He also stated that he was in the process of working out repayment schedules with each creditor.

Applicant was interviewed as part of his background investigation a few months later in October 2010.³ During that interview, he stated, in relevant part, that (1) his financial problems were due to a reduction in income due to a shift change at work, and (2) he was not capable of meeting his financial obligations at that time.

In December 2012, a few months after the SOR was issued, Applicant filed a Chapter 7 bankruptcy case.⁴ As part of that process, he obtained credit counseling as required by bankruptcy law.⁵ The bankruptcy case includes the two debts at issue here and others as well for a total of \$31,037 in unsecured debt listed on Schedule F of the bankruptcy paperwork. In addition, Schedule J of the bankruptcy paperwork indicates that his current expenditures exceed his current income in the amount of \$595 per month. The bankruptcy case was pending at the time of the hearing in this case.

Applicant's bankruptcy attorney, in a letter dated February 2, 2012, provided an explanation for the bankruptcy case and Applicant's efforts to resolve his financial problems, in relevant part, as follows:

[Applicant's] debt was caused in no small part from an adjusting ARM loan, which caused his mortgage to spike to the point where living expenses needed to be supplemented by credit cards. He responsibly attempted to meet his debt, but like so many other victims was unable to do so without incurring additional debt. This loan has since adjusted to a reasonable value and [Applicant] is now stable in his finances, but the damage to his credit was already done and had to be mitigated through bankruptcy.

It should be noted that prior to retaining my services, [Applicant] attempted to resolve his credit card debts through payment plans and negotiations, but as he was current was instructed to "just let them get behind a few months" before anyone would talk to him. I can personally attest to this insane attitude as a bankruptcy attorney as well as my practice of debt renegotiation. It is a credit to [Applicant's] personality and moral character

² Exhibit 1.

³ Exhibit 4.

⁴ Exhibit 6.

⁵ Exhibit A.

that he made this good-faith effort rather than just look for an easier way out.⁶

Law and Policies

It is well-established law that no one has a right to a security clearance.⁷ 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.”⁸ 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.⁹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁴ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁵

⁶ Exhibit B.

⁷ *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).

⁸ 484 U.S. at 531.

⁹ Directive, ¶ 3.2.

¹⁰ Directive, ¶ 3.2.

¹¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹² Directive, Enclosure 3, ¶ E3.1.14.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ *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.¹⁶

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.

Discussion

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.

¹⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. The two credit card accounts placed for collection, one of which was reduced to a judgment, raise security concerns. These matters indicate inability or unwillingness to satisfy debts²¹ and a history of not meeting financial obligations²² 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;

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.

²¹ AG ¶ 19(a).

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).

None of the mitigating conditions, individually or in combination, are sufficient to overcome and mitigate the security concerns. The evidence shows Applicant overextended himself, first with an ARM loan, and then with credit card debt when he was unable to meet living expenses. The situation deteriorated further when he followed advice, which was probably unwise, to allow his credit card accounts to become delinquent to improve his negotiating position with creditors. The result is that both accounts went into collection, a judgment was taken for one account, and he is now in Chapter 7 bankruptcy proceedings with more \$30,000 in unsecured debt. His current financial situation is precarious as shown by a negative monthly cash flow of several hundred dollars per month. At this point, there is no indication of a favorable upward trend upon which to rely, and it is too soon to tell if or when his financial situation will stabilize.

The evidence of Applicant's ongoing 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 concept.²⁴ 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.b:	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).