



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



In the matter of:)
)
-----) ISCR Case No. 11-00751
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

October 26, 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 more than \$30,000 in delinquent debts, which are currently unresolved. Applicant failed to present sufficient evidence to overcome the security concerns. 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 June 14, 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. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

On or about August 4, 2011, the Agency submitted its written case consisting of all relevant and material information that could be adduced at a hearing.³ This so-called file of relevant material (FORM) was mailed to Applicant and received by him on or about August 11, 2011. He then had a 30-day period to submit a response setting forth objections, rebuttal, extenuation, mitigation, or explanation. Applicant did not reply to the FORM. The case was assigned to me on October 5, 2011.

Findings of Fact

The SOR alleged four delinquent accounts ranging in amounts from \$178 to \$12,575 for a total of about \$31,110. In Applicant's two-page reply to the SOR (Answer), he admitted the three largest debts and denied the smallest debt of \$178. He also provided explanations for the various accounts. His admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 51-year-old employee of a federal contractor. He has worked as a quality-control inspector since November 2009. According to his security clearance application, he has been continuously employed since at least July 2000, except for an eight-month period of unemployment during 2008–2009.⁴

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 Directive, Enclosure 3, ¶ E3.1.7.

³ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which may be identified as exhibits in this decision.

⁴ Exhibit 4.

The four delinquent debts in the SOR stem from collection or charged-off accounts, and they are established by Applicant's admissions and credit reports.⁵ The admitted debts total more than \$30,000. One of these debts for \$8,497 was reduced to a judgment in 2007.⁶ His overall contention appears to be that these debts are old and should be removed from his credit report. He stated in his Answer that he contacted each of these three creditors and attempted to resolve the debts without success. Concerning the smallest debt for \$178, he stated that he contacted the insurance company, discovered that a bill was lost or missing, and took care of it. In his Answer, he attributed his financial problems to family obligations, to include assisting his mother-in-law with housing and utilities.

Applicant did not present any documentary evidence (e.g., account statements, financial records, correspondence, settlement offers, etc.) showing he has paid, settled, reduced the balance owed, or otherwise resolved any of the four debts. Likewise, he did not present any documentary evidence rebutting, contradicting, or otherwise invalidating the information in the credit reports⁷ relied on by Department Counsel.

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.⁸ 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."⁹ 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.

⁵ Exhibits 7 and 8.

⁶ Exhibit 8 at 3.

⁷ Exhibits 7 and 8.

⁸ *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).

⁹ 484 U.S. at 531.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁰ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹¹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹² The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹³ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁴ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁵ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁶ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁷

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.¹⁸ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

¹⁰ Directive, ¶ 3.2.

¹¹ Directive, ¶ 3.2.

¹² ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹³ Directive, Enclosure 3, ¶ E3.1.14.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

¹⁶ *Egan*, 484 U.S. at 531.

¹⁷ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁸ Executive Order 10865, § 7.

Analysis

Under Guideline F for financial considerations,¹⁹ 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.²⁰ 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.²¹

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. The more than \$30,000 in delinquent debts, which include a judgment obtained in 2007, raise security concerns because they indicate inability or unwillingness to satisfy debts²² and a history of not meeting financial obligations²³ within the meaning of Guideline F. Indeed, it appears he has no intention of repaying the three largest debts. The facts are sufficient to establish these two disqualifying conditions.

There are six mitigating conditions to consider under Guideline F.²⁴ 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;

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

²⁰ 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).

²¹ AG ¶ 18.

²² AG ¶ 19(a).

²³ AG ¶ 19(c).

²⁴ AG ¶ 20(a)–(f).

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;²⁵

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. The evidence supports a conclusion that Applicant's financial house has been in disrepair for some time and he has not made a documented effort to address it. Moreover, what is missing here is a realistic plan, coupled with actions implementing that plan, to resolve the delinquent debts. Time will tell if Applicant has both the ability and willingness to resolve his financial problems.

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 concept²⁶ and Applicant's favorable evidence. Nevertheless, Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision.

²⁵ 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).

²⁶ AG ¶ 2(a)(1)–(9).

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.d:	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