



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-01473
)
Applicant for Security Clearance)

Appearances

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

January 9, 2012

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 Applicant has a history of financial problems or difficulties consisting of 20 delinquent accounts for more than \$20,000. He did not present documentary evidence showing that he paid, settled, reduced the balance owed, disputed, or otherwise resolved any of the debts. He does not have a realistic plan in place to resolve the debts. 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 June 23, 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 answered the SOR and requested a hearing. The case was assigned to me August 11, 2011. The hearing took place October 20, 2011. The transcript (Tr.) was received October 28, 2011. The record was kept open for two weeks until November 4, 2011, to allow Applicant to present documentary evidence, as he presented none during the hearing. To date, no such matters were received.

Findings of Fact

The SOR alleged 21 delinquent accounts in amounts ranging from \$35 to \$9,197 for a total of about \$21,268. In Applicant's reply to the SOR, he admitted the debts except for the debt alleged in SOR ¶ 1.o, claiming it duplicated the debt in SOR ¶ 1.d. His claim of duplication is accepted as valid and a favorable finding will be made on one of those allegations. 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 37-year-old employee of a federal contractor. He has been employed as a systems engineer for a company engaged in defense contracting since September 2010. He is seeking to obtain a security clearance for that job, which pays an annual salary of \$92,000.² He is unmarried and has a 21-year-old child. He has lived with his parents, at their request, since April 2009 so he can assist them financially. His two adult sisters and two minor children also live in the same household. Applicant and his mother, who works as a nurse, are providing the financial support for the household.

In addition to his current job, Applicant and his father have operated their own computer-consulting company since 2007. Initially, the company was profitable, but it

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 Tr. 60.

has generated no revenue in 2011 or 2010.³ He worked a regular job during most of the same period. According to his security clearance application,⁴ he was unemployed (aside from his consulting job) from August 2009 to September 2010. Otherwise, he has been continuously employed by multiple firms since October 2001. In 1999, he broke his neck while riding rodeo. As a result, he underwent a cervical fusion procedure. He was then out of work until returning in October 2001. He relied on his family for financial support during this period of unemployment.

Applicant has a history of financial problems or difficulties. He was unaware of any financial problems until about September 2010 when he obtained a credit report in preparation for completing his security clearance application.⁵ As alleged in the SOR, and established by his admissions and the documentary evidence,⁶ the delinquent debts consist of the following: (1) a \$1,178 unpaid judgment filed in about June 2008; (2) a \$752 collection account; (3) a \$35 collection account; (4) a \$170 collection account; (5) a \$144 medical collection account; (6) a \$149 collection account; (7) a \$210 collection account; (8) a \$392 collection account; (9) \$735 collection account; (10) a \$350 medical collection account; (11) a \$9,197 collection account; (12) a \$2,316 collection account; (13) a \$2,055 charged-off account; (14) a \$2,435 collection account; (15) a \$170 collection account (which is a duplicate account); (16) a \$224 collection account; (17) a \$149 collection account; (18) a \$154 collection account; (19) a \$180 collection account; (20) a \$129 collection account; and (21) a \$144 collection account.

Applicant claims, in his Answer to the SOR and in his hearing testimony, that he paid certain accounts, that he is in the process of paying others, and that he had tried to pay or contact others. At hearing, he did not present any documentary evidence in support of his claims. Likewise, after the hearing, he not present any documentary evidence. Given the lack of documentary evidence, I find that Applicant has not paid, settled, reduced the balance owed, disputed, or otherwise resolved any of the debts.

Applicant has no sizeable assets or cash money in the bank. He has not sought counseling, assistance, or advice from a financial professional (e.g., an accountant, a certified financial counselor, a credit counselor, etc.) to address his debts.

Law and Policies

The only purpose of a security clearance case is to determine if a person is suitable for access to classified information. And it is well-established law that no one

³ Tr. 37.

⁴ Exhibit 1.

⁵ Exhibit 2.

⁶ Exhibits 2–5.

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 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.

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.

¹⁶ 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.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.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. The 20 delinquent debts for more than \$20,000 raise security concerns, and they 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 financial irresponsibility.

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).

²² AG ¶ 19(c).

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.

None of the mitigating conditions, individually or in combination, are sufficient to overcome and mitigate the security concerns. With regard to AG ¶ 20(b), I considered the periods of unemployment during 1999–2001 and 2009–2010. The former period, although of some duration, is too remote in time to explain his present circumstances. The latter period was recent, and it certainly had a negative effect on Applicant's overall financial situation and ability to meet his financial obligations.

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).

With that said, Applicant has done little to help himself. What is missing here is documented proof that he has made progress in resolving his delinquent debts.²⁴ In other words, he has not: (1) articulated a comprehensive approach for addressing his 20 delinquent debts for more than \$20,000; (2) reasonably documented actions taken in furtherance of that approach; and (3) demonstrated a not insubstantial reduction in indebtedness and an improvement to his financial situation. Indeed, there is no indication of a favorable upward trend upon which to rely. His statements that he has made payments in the past and his promises to pay in the future are insufficient evidence in mitigation. Looking forward, there is a strong likelihood that his financial problems will continue.

The evidence of Applicant's unresolved and ongoing delinquent debts 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.²⁵ Based on the evidence before me, it is too soon to tell if or when Applicant will establish a track record of financial responsibility. 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.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraphs 1.p–1.u:	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 See ISCR Case No. 03-23511 (App. Bd. Fed. 15, 2006) (it is reasonable to expect an applicant to have documentation about satisfaction of specific debts).

²⁵ AG ¶ 2(a)(1)–(9).