



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



In the matter of:)
)
-----) ISCR Case No. 11-03192
)
Applicant for Security Clearance)

Appearances

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

07/31/2012

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 (failure to file federal income tax returns, back taxes owed to the IRS, and delinquent debts) that is ongoing. Applicant failed to present sufficient evidence to overcome the security concerns stemming from his problematic financial history. Accordingly, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on or about March 26, 2012, the Defense Office of Hearings and Appeals (DOHA) sent Applicant 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 timely answered the SOR and requested a hearing. The hearing took place July 10, 2012. The transcript (Tr.) was received July 26, 2012.

Findings of Fact

The SOR alleged unfavorable financial matters as follows: (1) failure to file federal income tax returns for 2006, 2007, 2008, and 2009; and (2) seven delinquent debts (collection or charged-off accounts) in amounts ranging from \$187 to \$3,205 for a total of about \$6,000. Applicant admitted these allegations in his answer to the SOR. His admissions are accepted and adopted and incorporated as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 28-year-old employee of a federal contractor. He is seeking a security clearance for the first time for his job as an electrician at a U.S. Air Force base. He began this job in December 2009. His gross income for 2010 was about \$61,000, and for 2011 it was about \$64,000.² Applicant's electrical shop superintendent provided a highly favorable letter of recommendation.³ The letter describes Applicant as an honest and well-rounded employee who possesses a good attitude and unquestionable integrity. Applicant describes his job as a great experience and an opportunity to serve his country.⁴

Applicant has a history of financial problems, which he does not dispute. He failed to file federal income tax returns for 2006–2009 due to youth, inexperience,

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 Exhibits H and I.

³ Exhibit A.

⁴ Tr. 30.

immaturity, and procrastination.⁵ At the hearing, he produced documentary information from the IRS that he has now filed returns for 2006–2010.⁶ He also admitted that he did not file a federal income tax return for 2011, and he did not file an application for an automatic extension of time to file the return.⁷ He estimated that he owes the IRS about \$5,000 to \$8,000 in back taxes.⁸ His intent is to repay the back taxes by entering into an installment repayment agreement with the IRS.

Applicant's attributes the \$6,000 in delinquent debts to irresponsibility on his part.⁹ In his answer to the SOR, he explained that he entered into a debt-relief program with the goal of settling the unsecured debts. Based on the documentation produced at the hearing, he entered into this program in 2011, the program included all seven delinquent debts in the SOR, and he made a payment of about \$480 in December 2011.¹⁰ He claims he made five payments into the plan, but he produced no paperwork to support his claim. Further, his testimony about his payment record was confusing.¹¹ Sometime in early 2012, he put the program on hold in light of his uncertainty surrounding the pending security clearance case.¹²

Law and Policies

It is well-established law that no one has a right to a security clearance.¹³ 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."¹⁴ 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 Tr. 32–33.

⁶ Exhibits D, E, F, G, and H.

⁷ See IRS Form 4868.

⁸ Tr. 57–58.

⁹ Tr. 36.

¹⁰ Exhibits 2, B, and C.

¹¹ Tr. 51–57.

¹² Tr. 43–44, 50.

¹³ *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).

¹⁴ 484 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.¹⁵ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁶

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁷ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁰ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²¹ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²²

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.²³ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

¹⁵ Directive, ¶ 3.2.

¹⁶ Directive, ¶ 3.2.

¹⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁸ Directive, Enclosure 3, ¶ E3.1.14.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ Directive, Enclosure 3, ¶ E3.1.15.

²¹ *Egan*, 484 U.S. at 531.

²² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²³ Executive Order 10865, § 7.

Discussion

Under Guideline F for financial considerations,²⁴ 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.²⁵ 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.²⁶

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. Standing alone, Applicant's neglect of his federal income tax obligations raises serious security concerns.²⁷ It should be obvious, but it is nonetheless stated here, that any applicant who is unwilling or unable to fulfill their federal income tax obligations is not a good candidate for a security clearance, which is a privilege granted by the federal government. Overall, Applicant's unfavorable financial history indicates inability or unwillingness to satisfy debts²⁸ and a history of not meeting financial obligations²⁹ 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:

²⁴ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁵ 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).

²⁶ AG ¶ 18.

²⁷ AG ¶ 19(g).

²⁸ AG ¶ 19(a).

²⁹ AG ¶ 19(c).

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;³⁰

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, is sufficient to overcome and mitigate the security concerns stemming from Applicant's problematic financial history, which is ongoing. For reasons that are perhaps understandable but nonetheless inexcusable, Applicant fell behind on his federal income tax obligations by failing to file returns for 2006–2009, a period of four tax years. To his credit, he has now filed returns for those years and for 2010. But he failed to timely file a return for 2011, and he has not requested an extension of time to do so. He owes the IRS an undetermined amount of back taxes and there is no repayment plan in place. In light of these circumstances, it is simply too soon to tell if Applicant's federal income tax problems are safely in the past or will continue to recur.

In addition to the federal tax problems, he failed to adhere to and follow through on the debt-relief program. As a result, those seven unsecured delinquent debts remain unresolved.

³⁰ 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).

Applicant's history of financial problems is both longstanding and ongoing. Based on the evidence before me, I am not persuaded that Applicant has clearly and convincingly committed to cleaning up his financial house and then living a financially-responsible lifestyle. Until he does so, he is not a good candidate for a security clearance to work in the defense industry.

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.³¹ In particular, I gave Applicant credit for his good employment record and his efforts to address his financial problems. Although these matters weigh in his favor, they are not enough to mitigate and overcome the security concerns. 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

³¹ AG ¶ 2(a)(1)–(9).