



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



In the matter of:)
)
-----) ISCR Case No. 11-05428
)
Applicant for Security Clearance)

Appearances

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

10/05/2012

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 consisting of more than 20 delinquent debts for a total of more than \$65,000. He was recently successful in obtaining a loan modification on his first mortgage loan, which was past due, but the second mortgage loan remains past due. Otherwise, Applicant presented little in the way of persuasive documentary evidence showing that he is making measurable progress in resolving his financial problems, and the bulk of his delinquent debts remain unresolved. Applicant did not provide sufficient evidence to mitigate the security concerns stemming from his unfavorable 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 April 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 September 6, 2012. The hearing record was kept open until September 17, 2012, to provide Applicant an opportunity to submit additional documentary information. To date, no such matters were received. The transcript (Tr.) was received September 12, 2012.

Findings of Fact

The SOR alleged more than 20 delinquent debts for a total of more than \$65,000. The delinquent debts include two past-due mortgage loan accounts, several student loans, unpaid judgments, and collection accounts, to include several medical collection accounts. His answer to the SOR was mixed with admissions and denials along with brief explanations. His admissions and explanations 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 41-year-old employee of a federal contractor. He is seeking a security clearance for the first time for his position as an analyst, which he has held since April 2010. He has a good employment record with his employer.² His place of employment is a U.S. military installation that engages in the testing and evaluation of various defense systems. His annual salary for 2012 is \$47,500, and it was slightly less in 2011. His monthly budget, which includes income from his spouse, shows no unusual or high expense items and a positive net remainder of about \$335.³

Applicant is married and has two children, ages seven and two. His educational background includes a bachelor's degree awarded in 2007. Before his current job, his

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 B and C.

³ Exhibit E.

employment history included working as a teacher in various capacities. His security clearance application reports no periods of unemployment.⁴ But at the hearing, he reported losing a job in 2008 after several months of not being paid by his employer. His spouse discussed these circumstances and Applicant's response thereto in a letter.⁵

Applicant has a history of financial problems, which he admitted in response to the SOR and in his hearing testimony, and that history is confirmed by credit reports from 2010 and 2012.⁶ He stated that he and his wife no longer use credit cards and they are in the process of slowly pulling themselves out of a financial hole. He stated that he was not involved with or was ignoring his financial responsibilities, but that is no longer the case after completing a financial counseling course in December 2011.⁷

The following table summarizes the current status of the delinquent debts alleged in the SOR.

<i>Debt</i>	<i>Current Status</i>
SOR ¶ 1.a—Unpaid judgment for \$785 obtained in 2011.	He believed it had been paid, but the creditor is now garnishing his wages. (Tr. 38–40)
SOR ¶ 1.b and ¶ 1.d—Unpaid judgments for \$6,098 and \$2,374 obtained by homeowners association (HOA).	Judgment satisfied and lien released in June 2012, and he is working with the HOA to reach a settlement on the amount owed. (Exhibits F and G; Tr. 40–44)
SOR ¶ 1.c—Unpaid judgment for \$4,476 obtained by state university in 2009.	Balance reduced to about \$3,400 by wage garnishment, which is no longer in effect. Unresolved. (Tr. 44-49)
SOR ¶ 1.e—state tax lien for \$830.	No documentation to support his claims that lien was taken care of or it did not exist; appears on 2012 credit report. Unresolved. (Tr. 49–51; Exhibits 3 and 5)
SOR ¶ 1.f—collection account for \$301.	Unresolved. (Tr. 51–52)

⁴ Exhibit 1.

⁵ Exhibit D.

⁶ Exhibits 4 and 5.

⁷ Exhibit A.

SOR ¶¶ 1.g–1.m, 1.t, 1.v, 1.x, and 1.y—medical collection accounts with unnamed creditors for \$150, \$210, \$580, \$92, \$10, \$11, \$201, \$9, \$410, \$58, and \$119, respectively.	He is unsure what these debts are for and does not know the identity of the creditors. (Tr. 52–54, 71)
SOR ¶ 1.n—collection account for \$1,028.	He believes account was settled; no documentation. Unresolved. (Tr. 54–57)
SOR ¶ 1.o—Seven students loans in collection for a total of \$26,012.	He believes loans were consolidated into a single account or judgment, which is being paid by payroll deduction monthly. Status of account (e.g., good standing, delinquent, etc.) and balance are unknown. (Tr. 57–62; Exhibit H)
SOR ¶ 1.p—first mortgage loan past due in amount of \$9,510.	Lender approved loan modification in August 2012, with first payment due in September. (Exhibit I; Tr. 62–66)
SOR ¶ 1.q—second mortgage loan past due in amount of \$13,867.	Unresolved. (Tr. 62–66)
SOR ¶¶ 1.r and 1.s—unpaid judgments for \$269 and \$99, obtained in 2004 and 2009, respectively.	He claims the debts are due to fraud; no documentation. Unresolved. (Tr. 66–71).
SOR ¶ 1.u—collection account for \$166.	Unresolved. (Tr. 70–71)
SOR ¶ 1.w—collection account for \$835.	Unresolved. (Tr. 71–72)

To summarize, Applicant resolved the past-due loan on his first mortgage by obtaining a loan modification. He also resolved the unpaid judgments obtained by the HOA, although a final settlement is pending. Otherwise, the debts are unresolved.

Law and Policies

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

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.

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.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.

Discussion

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 supports a conclusion that Applicant has a history of financial problems or difficulties. His unfavorable financial history indicates inability or unwillingness to satisfy debts²² and a history of not meeting financial obligations²³ 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

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).

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;²⁴

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 largely unresolved and ongoing. With that said, there is no security significance to the multiple medical collection accounts owed to unnamed creditors. I have seen nothing to suggest the medical debts are indicative of poor self-control, lack of judgment, or irresponsibility. It is unlikely that the debts were incurred frivolously on luxury items, but it is likely they were incurred for necessary medical treatment and care. Even setting aside the medical collection accounts and the two resolved matters noted in the findings of fact, Applicant is still facing a small mountain of delinquent debt without a realistic plan to address his problematic financial situation. Although he is making efforts to become more engaged, he did not demonstrate a firm grasp or command of his problematic financial history. At this time, it is simply too soon to tell if Applicant's financial problems are safely in the past or will continue to recur.

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 also gave due

²⁴ 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).

consideration to the whole-person concept.²⁵ Having done so, I conclude that 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b and 1.d:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.e–1.f:	Against Applicant
Subparagraphs 1.g–1.m:	For Applicant
Subparagraphs 1.n–1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraphs 1.q–1.s:	Against Applicant
Subparagraphs 1.t, 1.v, 1.x, 1.y:	For Applicant
Subparagraphs 1.u and 1.w:	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

²⁵ AG ¶ 2(a)(1)–(9).