



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



In the matter of:)
)
-----) ISCR Case No. 11-06085
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

12/27/2012

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 financial problems that are largely unresolved and ongoing. Applicant did not present sufficient evidence to explain or mitigate 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 August 20, 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. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

On or about October 10, 2012, Department Counsel submitted 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, who received it November 3, 2012. His reply to the FORM is admitted as Exhibit A without objections. The case was assigned to me December 11, 2012.

Findings of Fact

The SOR alleged eight unpaid medical collection accounts for a total of about \$16,515, and an unpaid consumer collection account for \$2,161. His answer to the SOR was mixed; he admitted the eight unpaid medical collection accounts, but denied the other collection account claiming he had paid it in 2010. He also provided an explanation of his adverse financial history. 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 28-year-old linguist who is currently deployed overseas working in support of the U.S. armed forces. He has never married and has no children. He has worked for the same federal contractor since about February 2010. He is seeking to obtain a security clearance for the first time. To that end, he completed a security clearance application in July 2010.⁴

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.

Applicant was born in Pakistan. He became a naturalized U.S. citizen in 2003, which is the same year he completed high school. Since then, he has attended two colleges on a periodic basis during 2003–2010, although he has not received a degree.

In addition to his current job, Applicant reported his employment history on his security clearance application as follows: (1) a part-time job as a banquet server at a large hotel from September 2009 to February 2010; (2) a part-time job as a banquet server at a large hotel from October 2008 to September 2009; (3) a full-time job as a linguist during September 2009; (4) a part-time job as a sales associate for a large department store from July 2008 to September 2009; (5) a full-time job as a sales associate for a wireless phone company from December 2005 to July 2008; (6) a full-time job as a store manager for a wireless company from March 2003 to December 2005; (7) a part-time job as a cashier in a grocery store from July 2003 to March 2004; and (8) a part-time job as a cashier in a grocery store from November 2000 to July 2003.⁵

Turning to the SOR allegations, Applicant has a history of financial problems, which he does not dispute. In addition to his admissions, the indebtedness is established by multiple credit reports covering the period 2009–2012.⁶ In both his answer to the SOR and his reply to the FORM, Applicant contends that he accumulated the debts due to a job loss and lack of medical insurance. He also contends that he intends to pay the eight unpaid medical collection accounts. Concerning the other collection account, he contends that he paid it in about February 2010, but he has been unable to produce documentary proof of payment because it is unavailable via his online banking. His efforts to resolve the indebtedness have also been made more difficult by his overseas location.

Applicant did not present documentation showing the nine collection accounts are paid, settled, in a repayment agreement, in negotiation, in dispute, or otherwise resolved. Likewise, he did not present evidence of a realistic plan to pay his indebtedness as well as the financial means to implement the plan.

In his reply to the FORM,⁷ Applicant submitted two highly favorable letters of recommendation. Each is from a military officer whom Applicant served with while deployed overseas. Each attests to exceptional performance of duty by Applicant as well as the difficult and dangerous conditions in which those duties were performed.

⁵ Exhibit 4.

⁶ Exhibits 5, 6, 7, and 8.

⁷ Exhibit A.

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 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

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.

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).

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.

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. This conclusion is supported by the nine collection accounts for more than \$18,000, which remain unresolved. His unfavorable financial history indicates inability or unwillingness to satisfy debts²² and a history of not meeting financial

¹⁸ Executive Order 10865, § 7.

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).

obligations.²³ The facts are more than sufficient to establish these disqualifying conditions.

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;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 the most pertinent here is AG ¶ 20(b). Eight of his nine collection accounts resulted from necessary medical care for which he lacked medical insurance as well as the means to pay for the care. These are circumstances largely beyond his control. But he does not receive full credit under this mitigating condition, because the evidence does not show that he acted responsibly under the circumstances. The eight medical collection accounts remain unresolved, and he has not taken documented action to resolve them despite being gainfully employed

²³ AG ¶ 19(c).

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).

in a full-time job by a federal contractor since February 2010, a period of more than two years. That is not responsible behavior.

Of course, a security clearance case is not aimed at collecting debts.²⁵ Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the security guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following commonsense standard:

The Board has previously noted that the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an application is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an application demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.²⁶

Here, the evidence fails to show that Applicant has established a reasonable plan to resolve his financial problems and taken significant actions to implement that plan. At most, Applicant's stated intentions to pay his debts are nothing more than a promise to act in the future, which is not sufficient evidence to mitigate the security concerns.

Under *Egan* and the clearly-consistent standard, I have doubts or concerns about Applicant's fitness or suitability for a security clearance. 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 consideration to the whole-person concept.²⁷ In particular, I gave due consideration to the two letters of recommendation submitted in support of Applicant.²⁸ Having done so, I conclude that Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision.

²⁵ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

²⁶ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

²⁷ AG ¶ 2(a)(1)-(9).

²⁸ Exhibit A.

Formal Findings

The formal findings on the SOR allegations are as follows:

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