



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



In the matter of:)	
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)	ISCR Case No. 11-06190
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmarten, Esq., Department Counsel
For Applicant: *Pro se*

04/23/2013

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for a security clearance to work in the defense industry. The evidence shows he has a history of financial problems that is ongoing. He did not present sufficient evidence to mitigate the financial considerations security concern. Accordingly, this case is decided against Applicant.

Statement of the Case

On December 7, 2012, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant or continue access to classified

information.¹ 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 answered the SOR in a one-page memorandum dated January 15, 2013. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

On or about February 6, 2013, 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 February 18, 2013. He did not reply to the FORM within the 30-day period allowed under the Directive. The case was assigned to me April 16, 2013.

Rulings on Evidence

Exhibit 8 is an unauthenticated portion of a background report of investigation (ROI) of Applicant. Because it is not authenticated, the ROI is not admissible evidence.⁴ And because it is not authenticated, I have no idea if the ROI is accurate and reliable. I have not considered the ROI in this case.

Findings of Fact

Applicant admits the SOR allegations as follows: (1) two state tax liens in the amounts of \$8,859 and \$712; (2) five collection or charged-off accounts for a total of about \$10,188; (3) an unpaid judgment for \$21,061; and (4) a defaulted mortgage loan, which went into foreclosure in about December 2005. 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 52-year-old employee of a federal contractor. He married in 1985 and divorced in 2005. His job title or position is senior technician, and he has worked for the same company since 1999. He is seeking to retain a security clearance previously granted to him. To that end, he completed a security clearance application in January

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 Department of Defense 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 evidentiary exhibits in this decision.

⁴ Directive, Enclosure 3, ¶ E3.1.20.

2011, disclosing a number of derogatory financial accounts in response to questions seeking such information.⁵

Applicant has a history of financial problems that is ongoing. As admitted, his history includes back taxes owed to a state, collection or charged-off accounts, an unpaid judgment, and a foreclosure after defaulting on a mortgage loan. In addition to his admissions, these matters are established by credit reports from 2011 and 2012.⁶

Applicant has not paid, settled, entered into repayment agreements, disputed, or otherwise resolved the back taxes, collection or charged-off accounts, or the unpaid judgment. The foreclosed mortgage loan in the SOR does not allege a deficiency balance; the 2011 credit report shows a zero balance for the account; and the credit report states that the creditor grantor reclaimed the collateral to settle the defaulted the mortgage loan.⁷

During processing of his case, Applicant did not answer interrogatories sent to him.⁸ He stated the following in a May 25, 2012 letter:

I furnished in good faith, all the information that I had available to me at the time of the meeting with the field investigator. The additional questions are the same ones answered during that interview. I have not made much head way in resolving these issues. Having had a clearance since the 1980s, at this time do not feel I will be eligible for a clearance.⁹

He struck a similar tone in his January 2013 Answer to the SOR, explaining:

Also I would like to state that during the same time frame 2006 to present that I have paid off approximately \$90,000 in debt. And I have previously stated that having held a security clearance since 1980, I do not feel that I meet the requirements for a security clearance at this time.¹⁰

And he did not take advantage of the opportunity to reply to the FORM.

⁵ Exhibit 4.

⁶ Exhibits 5 and 6.

⁷ Exhibit 5.

⁸ Exhibit 7 at 1.

⁹ Exhibit 7 at 2.

¹⁰ Answer to SOR (There is no documentary evidence to show \$90,000 in debt reduction).

Law and Policies

It is well-established law that no one has a right to a security clearance.¹¹ 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.”¹² 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.¹³ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁵ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁶ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁷ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁸ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁹ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁰

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

¹¹ *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).

¹² 484 U.S. at 531.

¹³ Directive, ¶ 3.2.

¹⁴ Directive, ¶ 3.2.

¹⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁶ Directive, Enclosure 3, ¶ E3.1.14.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ *Egan*, 484 U.S. at 531.

²⁰ 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.²¹ 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,²² 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.²³ 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.²⁴

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 debts²⁵ and a history of not meeting financial obligations.²⁶ The facts are more than sufficient to establish these disqualifying conditions.

²¹ Executive Order 10865, § 7.

²² AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²³ 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).

²⁴ AG ¶ 18.

²⁵ AG ¶ 19(a).

²⁶ AG ¶ 19(c).

There are six mitigating conditions to consider under Guideline F.²⁷ Based on the evidence before me, none of the mitigating conditions are sufficient to fully mitigate the security concerns. Applicant has held a security clearance for many years, and he has been continuously employed since at least 1999. It is possible that his divorce in 2005 had a negative effect on his finances, but he did not present evidence to establish a connection between the two. He has done little to resolve the back taxes, the five collection or charged-off accounts, or the unpaid judgment.

Of course, a security clearance case is not aimed at collecting debts or enforcing tax laws.²⁸ 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 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 applicant 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 applicant 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.²⁹

Here, the evidence does not support a conclusion that Applicant has established a plan and taken actions to implement that plan sufficient to mitigate the security concern under the Appeal Board's standard.

Applicant's history of financial problems raises 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 consideration to the whole-

²⁷ AG ¶¶ 20(a)-(f).

²⁸ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

²⁹ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

person concept.³⁰ 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
Subparagraphs 1.a–1.h:	Against Applicant
Subparagraph 1.i:	For Applicant ³¹

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

³⁰ AG ¶ 2(a)(1)–(9).

³¹ Decided for Applicant because the evidence shows the mortgage loan was resolved by foreclosure and there is no deficiency balance.