



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-08490
)
Applicant for Security Clearance)

Appearances

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

10/09/2012

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 that date back to his time in college. He incurred delinquent debts, which included collection accounts and charged-off accounts. Since obtaining stable and well-paying employment with a defense contractor in March 2011, he brought his student loans into good standing, paid two judgments, paid five delinquent debts, and he is following a reasonable and realistic plan to resolve the remaining four largest debts. Applicant presented sufficient evidence to mitigate the security concerns stemming from his unfavorable financial history. Accordingly, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on or about May 3, 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 7, 2012. The transcript (Tr.) was received September 18, 2012.

Rulings on Procedure

The SOR was amended to correct a minor drafting error in SOR ¶ 1.d by changing the figure to \$5,760.² In addition, Department Counsel, to his credit, conceded the debts alleged in SOR ¶¶ 1.e, 1.j, and 1.l are the same debt, and so they will be treated as one.³

Findings of Fact

The SOR alleged that Applicant has ten delinquent debts consisting of collection and charged-off accounts ranging in amounts from \$150 to \$6,249 for a total of about \$20,342. In his answer to the SOR, Applicant admitted these ten debts, provided brief explanations, and provided documentary information, all of which is considered to be part of his answer. 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 25-year-old software engineer who is employed by a large company engaged in defense contracting. He has had this job since March 2011. He is seeking a security clearance for the first time.⁴ His salary for his current job was \$59,000 in 2011, and it is \$60,000 for 2012. He estimated that he has about \$1,000 in savings and \$800 in a checking account. He participates in his company's 401(k) plan

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. 19–21.

³ Tr. 25.

⁴ Exhibit 1.

at the 3% level. He has a credit card for business travel, but has no credit card accounts for personal expenses.

Before his current job, Applicant worked in an entry-level position as a copier network technician from August 2010 to March 2011. This was his first post-college job, as he earned a bachelor's degree in computer engineering during 2005–2010, graduating in May 2010. His employment history also includes part-time jobs during his college years.⁵ He worked as a checkout coach at a grocery store during 2008–2011, an overnight stocker during 2007, and a concession worker at a movie theater during 2006.

Applicant has a history of financial problems, which is confirmed by credit reports from 2010 and 2012.⁶ He traces his financial problems to 2007, when his father lost his job. Applicant was then in college, was not financially independent, and relied on his father for financial support. Facing a financial dilemma, he considered finishing his degree a high priority and he decided to stay in college. Over time, he incurred delinquent debts, consisting of mostly unsecured credit card debt for living expenses. In 2009, he entered into a debt-consolidation plan wherein he paid \$400 monthly for about six months before he decided that the fees were too high and the monthly payment was difficult to afford as a college student. After finishing college in 2010, his first job was an entry-level position. That job did not pay very well, and he essentially lived paycheck-to-paycheck.

Upon securing his current job in March 2011, Applicant took action to address his students loans, which were about five months delinquent but not in default. He presented documentary information showing that he has made monthly payments on three student loans since July 2011, and the loans are in good standing.⁷ Specifically, he has made 13 monthly payments for a total of about \$4,858 through July 2012.⁸

Concerning the delinquent debts, Applicant has followed a plan or process of saving enough money to pay off one debt, starting with the smallest debt, and working his way up to the larger debts. He does not contact a creditor until he thinks he has sufficient funds to resolve the debt. The following table summarizes the current status of the delinquent debts.

⁵ Exhibit 1.

⁶ Exhibits 3, 4, and A-7.

⁷ Exhibit A-8.

⁸ Exhibit A-8.

Debt	Current Status
SOR ¶ 1.a—collection account for \$228.	Paid in May 2012. (Exhibit A-4)
SOR ¶ 1.b—collection account for \$204.	Paid in May 2012. (Exhibit A-4)
SOR ¶ 1.c—collection account for \$150.	Paid in May 2012. (Exhibit A-3)
SOR ¶ 1.d—collection account for \$5,760.	Unresolved.
SOR ¶ 1.e—collection account for \$1,414.	Paid in August 2012. (Exhibit A-6)
SOR ¶ 1.f—\$6,249 charged-off account.	Unresolved.
SOR ¶ 1.g—\$1,735 charged-off account.	Unresolved.
SOR ¶ 1.h—collection account for \$1,251.	Reduced to a judgment; paid in March 2012. (Exhibit A-2)
SOR ¶ 1.i—collection account for \$554.	Paid in July 2012. (Exhibit A-5).
SOR ¶ 1.j—\$1,347 charged-off account.	Same debt as in ¶ 1.e.
SOR ¶ 1.k—\$2,797 charged-off account.	Unresolved.
SOR ¶ 1.l—\$1,637 collection account.	Same debt as in ¶ 1.e.

In addition to the debts in the SOR, Applicant paid another delinquent account that was reduced to a judgment for \$1,497.⁹ He paid \$1,690 to resolve it in February 2012.

Applicant's plan at this point is to continue saving money and contact the creditors for the two smaller unresolved debts when he has sufficient funds to make lump-sum payments. For the two larger unresolved debts, he intends to contact them last and negotiate a repayment plan, because the amounts are too large for lump-sum payments. He anticipates paying off the two smaller debts by approximately mid-2013, at which point he will contact the two remaining creditors.

Applicant made a straightforward and well-organized presentation at the hearing. He did not quibble with his history of indebtedness and he did not attempt to shirk responsibility for the debts. Based on my opportunity to listen to his testimony and observe his demeanor, I found Applicant's hearing testimony to be credible and worthy of belief.

⁹ Exhibit A-1.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁰ 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.”¹¹ 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.¹² An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁴ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁷ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁸ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁹

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

¹⁰ *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).

¹¹ 484 U.S. at 531.

¹² Directive, ¶ 3.2.

¹³ Directive, ¶ 3.2.

¹⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁵ Directive, Enclosure 3, ¶ E3.1.14.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ *Egan*, 484 U.S. at 531.

¹⁹ 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.²⁰ 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,²¹ 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.²² 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.²³

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 debts²⁴ and a history of not meeting financial obligations.²⁵ The facts are more than sufficient to establish these disqualifying conditions.

²⁰ Executive Order 10865, § 7.

²¹ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²² 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).

²³ AG ¶ 18.

²⁴ AG ¶ 19(a).

²⁵ 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;²⁶

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 are AG ¶¶ 20(c) and (d). Applicant's financial house was in disarray due to delinquent debts he incurred during college and a low-paying entry-level job after completing college. Since obtaining stable and well-paying employment with a defense contractor in March 2011, he has taken substantial steps toward cleaning up his financial house. First, in July 2011 he began making monthly payments on three delinquent student loans, which I consider a high priority akin to child support or income taxes. The available documentation shows he made 13 monthly payments for a total of about \$4,858 through July 2012, and the loans are in good standing. Second, he then turned his attention to the two unpaid judgments. He paid the first in February 2012 and the second in March 2012 for a total of nearly \$3,000. Both were paid a few months before the SOR was

²⁶ 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).

issued to him in May 2012. Third, he paid five delinquent debts in the months of May, July, and August 2012 for a total of about \$2,550. In total, he has paid about \$10,408 in student loan debt and delinquent debts from July 2011 to August 2012, a period of about 25 months. Fourth, he has a plan to pay the four unresolved debts, which are the largest and total about \$16,541. Taken together, these matters are a clear indication that the problem is being resolved by his good-faith efforts to pay or resolve his debts. The same matters demonstrate a positive upward trend, which can be relied upon to make the predictive judgment that he is likely to successfully resolve the remaining delinquent debts.

Of course, a security clearance case is not aimed at collecting debts.²⁷ 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.²⁸

Here, the evidence shows Applicant brought his student loans into good standing, paid two judgments, and paid five delinquent debts, thereby resolving six of the ten debts in the SOR. He did so during a period of about 25 months. And he has a reasonable and realistic plan to resolve the remaining four largest debts. In light of these circumstances, Applicant has established a documented track record of remedial actions sufficient to mitigate the security concerns under the Appeal Board's standard.

Under *Egan* and the clearly-consistent standard, I have no 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

²⁷ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

²⁸ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

whole-person concept.²⁹ Having done so, I conclude that Applicant met 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:	For Applicant
Subparagraphs 1.a–1.l:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge

²⁹ AG ¶ 2(a)(1)–(9).