



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



In the matter of:)
)
-----) ISCR Case No. 11-09760
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

12/04/2013

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. There is substantial evidence establishing a history of financial problems or difficulties, but he presented sufficient evidence to mitigate the financial considerations security concern. Accordingly, this case is decided for Applicant.

Statement of the Case

On or about April 30, 2013, 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 on May 28, 2013. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

Thereafter, on July 31, 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 August 13, 2013. He did not reply within the 30-day period allowed under the Directive. The case was assigned to me October 17, 2013.

Findings of Fact

Applicant is a 42-year-old employee of a federal contractor. He is seeking to obtain a security clearance for his job as an embedded software engineer. He has worked in that capacity since 2000 except for a two-month period in 2005, when he was unemployed. He has worked for his current employer since 2005. His educational background includes a bachelor's degree awarded in 1993. He has been married since 2006, and he and his wife have a son who was born in 2010.

There is substantial evidence that Applicant has a history of financial problems or difficulties.⁴ He attributes his negative financial history to obtaining a home-equity loan to invest in the stock market (it did not end well) as well as delinquent accounts due to forgetting to make payments.⁵ The SOR alleged five accounts in some form of delinquency, and they are discussed below *seriatim*.

SOR ¶ 1.a alleged that \$1,228 was past due on a home-equity loan, which had a balance of \$148,000. Applicant denied this allegation in his Answer, explaining that the account was current and in good standing. Although the account was past due as of

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 Exhibits 4–9.

⁵ Exhibit 5.

March 2013,⁶ the most recent credit report from July 2013 confirms his explanation.⁷ That credit report shows the account was opened in December 2005 with a balance of \$150,000. It also shows that the account was closed at Applicant's request in June 2013, it has a balance of \$148,000, and it is not past due.

SOR ¶ 1.b alleged a \$13,724 charged-off account owed to a major credit card company. Applicant denied this allegation in his Answer, explaining that he is currently making a \$300 monthly payment on the account. The charged-off account is reflected in the March 2013 credit report.⁸ And it appears in the July 2013 credit report with a balance of \$12,524, which shows he made four \$300 monthly payments.⁹

SOR ¶ 1.c alleged that \$407 was past due on a credit card account. Applicant admitted this allegation in his Answer, explaining that he was working with the creditor to resolve the account. The March 2013 credit report shows the account as \$407 past due with a balance of \$2,212. The July 2013 credit report shows it as \$1,191 past due with a balance of \$2,212.

SOR ¶ 1.d alleged that \$598 was past due on an account with a balance of \$8,223 as reflected in a February 2012 credit report.¹⁰ Applicant admitted this allegation in his Answer, explaining that he had contacted the creditor and established a \$274 monthly payment plan to pay off the remaining balance. This account does not appear in the March or July 2013 credit reports.¹¹

SOR ¶ 1.e alleged that foreclosure proceedings were initiated against Applicant due to defaulting on a second mortgage loan. Applicant admitted this allegation in his Answer, explaining that the foreclosure was related to his primary mortgage loan, which was subsequently brought current and is in good standing. As conceded by Department Counsel, the July 2013 credit report confirms his explanation.¹²

Applicant provided a personal financial statement in response to interrogatories.¹³ In summary, that statement shows the following: (1) a household net monthly income of

⁶ Exhibit 6.

⁷ Exhibit 8.

⁸ Exhibit 6.

⁹ Exhibit 8.

¹⁰ Exhibit 7.

¹¹ Exhibits 6 and 8.

¹² Brief at 5; Exhibit 8.

¹³ Exhibit 5.

\$13,418; (2) net monthly expenses of \$5,500; (3) total monthly debt payments to the five credits alleged in the SOR for \$3,347; and (4) a positive net remainder of \$4,571.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁴ 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.”¹⁵ 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.¹⁶ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁷

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁸ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁰ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²¹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²² The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²³

¹⁴ *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).

¹⁵ 484 U.S. at 531.

¹⁶ Directive, ¶ 3.2.

¹⁷ Directive, ¶ 3.2.

¹⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁹ Directive, Enclosure 3, ¶ E3.1.14.

²⁰ Directive, Enclosure 3, ¶ E3.1.15.

²¹ Directive, Enclosure 3, ¶ E3.1.15.

²² *Egan*, 484 U.S. at 531.

²³ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.²⁴ 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,²⁵ 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.²⁶ The overall concern 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.²⁷

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information within the defense industry.

Applicant's unfavorable financial history indicates inability or unwillingness to satisfy debts²⁸ and a history of not meeting financial obligations.²⁹ The facts are more than sufficient to establish these disqualifying conditions.

²⁴ Executive Order 10865, § 7.

²⁵ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁶ 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).

²⁷ AG ¶ 18.

²⁸ AG ¶ 19(a).

²⁹ AG ¶ 19(c).

There are six mitigating conditions under Guideline F.³⁰ Given the evidence here, I have considered the following as most pertinent:

AG ¶¶ 20(d) the individual initiated a good-faith effort to replay overdue creditors or otherwise resolve debts.

As established in the findings of fact, Applicant's financial problems are not insignificant, but those matters are now largely resolved. He resolved the two delinquencies related to his home, as both the home-equity loan and mortgage loan are current and in good standing. He also began a monthly payment plan on the largest unsecured debt. The two unresolved matters are relatively smaller sums and he has the financial means to resolve them. Moreover, his personal financial statement shows he is not financially overextended, thereby reducing any potential risk of having to engage in illegal acts to generate funds.

Of course, a security clearance case is not aimed at collecting debts or enforcing tax laws.³¹ 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.³²

Based on the available evidence, Applicant has taken enough significant actions to mitigate the security concern under Guideline F. Applicant has not presented a perfect case in mitigation, but he has presented enough evidence of his efforts to clean up his

³⁰ AG ¶¶ 20(a)-(f).

³¹ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

³² ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

fiscal house, and I am persuaded he will resolve the remaining delinquent debts in due course.

After weighing the relevant disqualifying and mitigating conditions and evaluating the evidence in light of the whole-person concept,³³ I conclude Applicant presented sufficient evidence to explain, extenuate, and mitigate the security concern. Accordingly, I conclude he has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	For Applicant
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Subparagraphs 1.a–1.e:	For Applicant
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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

³³ AG ¶ 2(a)(1)–(9).