



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



In the matter of:)
)
-----) ISCR Case No. 11-10385
)
Applicant for Security Clearance)

Appearances

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

04/26/2012

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 or difficulties consisting of, among other things, federal tax liens and more than \$100,000 in back taxes owed to the IRS. His financial problems are largely unresolved and ongoing. Looking forward, it is too soon to predict if or when he will resolve his federal tax problems and other financial problems. Applicant failed to present sufficient evidence to overcome 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 November 3, 2011, 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 March 12, 2012. The transcript (Tr.) was received March 23, 2012.

The record was kept open to allow Applicant to submit documentary evidence in addition to his Exhibits A–T, which were admitted at hearing. His post-hearing matters are admitted, without objections, as Exhibit U–13 documents relating to various debts; and Exhibit V–financial activity report on a child support account as of March 21, 2012.

Findings of Fact

The SOR alleged, in ¶¶ 1.a–1.ii, 37 unfavorable financial matters as follows: (1) a Chapter 13 bankruptcy case filed in 2009, but dismissed by the bankruptcy court in 2010; (2) four federal tax liens for tax years 1999, 2002, 2003, and 2006 for \$5,708, \$101,959, \$4,643, and \$1,682, respectively; (3) a state tax lien filed in May 2011 for \$5,136; (4) \$25,571 owed to a state child support agency; (5) an unpaid judgment for \$674 owed to a state agency; and (6) 29 delinquent accounts with various creditors in the total amount of approximately \$63,000. (SOR ¶¶ 1.i–1.ii) In Applicant’s reply or answer to the SOR, his responses were mixed with admissions and denials. His admissions are accepted and adopted and incorporated herein as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 62-year-old employee of a communications company. He is seeking to obtain a security clearance for his job as a contract site manager. In that capacity, he oversees and manages the day-to-day work of 7 to 35 employees.² His employment history includes several years of military service in the U.S. Air Force, which concluded in 1975 with an honorable discharge. He worked as a technician for a major telecommunications company from 1976 to 2002, when he retired with a lump-sum payment of about \$188,000. The lump-sum payment was used for (1) a \$60,000

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. 95–96.

down payment on a house in which he and his wife currently reside, (2) payment of debts to qualify for a mortgage loan, (3) providing care for his father, and (4) payment of living expenses when he was not working.³ Since 2002, he has been regularly employed, although not continuously, by various companies, and that work has taken place within a state prison and on several military installations. He had a four-month period of unemployment during 2002, a three-month period during 2007–2008, and a three-month period during 2008–2009.

Applicant completed a security clearance application in May 2010, and it is that application under review here.⁴ In completing the application, he reported financial problems, to include a federal tax lien and back taxes owed to the IRS.

Applicant's history of financial problems includes a Chapter 13 bankruptcy case. This type of case is commonly known as a wage-earner's plan in which the debtor seeks to pay creditors under a repayment plan approved by the bankruptcy court. He filed the Chapter 13 case in June 2009 listing assets of about \$209,242 and liabilities of \$236,007.⁵ The liabilities included a federal tax lien for tax year 2006 in the amount of \$1,682 listed on Schedule D of the bankruptcy paperwork. The bankruptcy case was dismissed in January 2010. The court dismissed the case when Applicant failed to confirm the Chapter 13 plan within the time set by the court. Applicant explained at hearing that the case was dismissed when he could not afford to make the sizable monthly payment proposed under the plan.⁶

In addition to the bankruptcy case, Applicant's history of financial problems includes the federal tax matters, a state tax lien, an outstanding child support debt owed to a state child support agency, an unpaid judgment owed to a state agency, and 29 delinquent accounts with various creditors in the total amount of approximately \$63,000. Those matters, as discussed below, are largely unresolved and ongoing.

Five credit reports from 2010 and 2011, taken together, establish that Applicant has four federal tax liens in the amounts of \$106,000, \$4,643, \$101,000, and \$2,989.⁷ The liens were filed by the IRS in October 2010, March 2008, and two in September 2005, respectively. He has not resolved these matters, although he has made payments to the IRS over the years via interception of income tax refunds.⁸ He submitted a

³ Tr. 93–95.

⁴ Exhibit 1.

⁵ Exhibit 4.

⁶ Tr. 50.

⁷ Exhibits 5–9.

⁸ Tr. 54–55; Exhibits A–B.

request to establish an installment agreement with the IRS in 2009,⁹ but there is no documentation showing if it was accepted. A few months ago in February 2012, he submitted a request to establish an installment agreement.¹⁰ He estimated the total amount owing at \$128,000 and proposed paying \$500 monthly. His request is now pending with the IRS.

The state tax lien for \$5,136 is established by credit reports from 2011.¹¹ The lien is for tax year 2006, and it was filed in May 2011. The state began collection action via a wage withholding order in February 2012.¹² Applicant explained at hearing that he has made \$100 monthly payments on the lien for the last two months and intends to continue doing so.¹³ He did not present documentation showing proof of these monthly payments.

Applicant has an outstanding child support obligation stemming from his first marriage. The child is now an adult, but he owed the state child support agency more than \$30,000 at one point.¹⁴ From October 2009 to March 2012, the balance has been reduced by collection payments to a little less than \$19,000.

Applicant has an unpaid judgment for \$674, which was obtained by a state agency in June 2009.¹⁵ He stated at hearing the judgment was paid off at the lesser amount of \$551.¹⁶ But he did not present documentation to support his statement, and the judgment is considered to be unresolved.

Concerning the 29 delinquent accounts with various creditors in the total amount of approximately \$63,000, these matters are established by the bankruptcy paperwork and the five credit reports.¹⁷ Applicant submitted documentation to establish proof of payment for some of these debts, but based on my review of these matters, he has established proof of payment for only 2 of the 29 delinquent accounts in the SOR (\$156

⁹ Exhibit J.

¹⁰ Exhibit I.

¹¹ Exhibits 8 and 9.

¹² Exhibit U at 6–7.

¹³ Tr. 57–59.

¹⁴ Exhibit V.

¹⁵ Exhibit 9.

¹⁶ Tr. 60.

¹⁷ Exhibits 4–9.

as alleged in SOR ¶ 1.i, and \$103 as alleged in SOR ¶ 1.r).¹⁸ He did present documentary proof of payment for many debts not alleged in the SOR, the majority of which were paid in 2002, presumably using funds from his lump-sum payment received upon his retirement that year.¹⁹ In addition, he submitted letters in which he is disputing debts with creditors.²⁰

At hearing, Applicant stated that, other than his house, he has minimal financial assets.²¹ In addition, his spouse lost her job as a travel agent in 2011 resulting in a reduction of household income.²² She is now working from home as a travel agent, but is yet to generate much income. He is now working with an attorney to address his outstanding debts. The general plan is to (1) address the federal tax liens and back taxes with the IRS, (2) dispute and remove any erroneous debts listed on his credit report, and (3) then seek relief via a Chapter 13 bankruptcy case to pay off the legitimate debts.²³ Applicant did not present documentation showing what actions the attorney has taken on his behalf.

Law and Policies

It is well-established law that no one has a right to a security clearance.²⁴ 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.”²⁵ 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.²⁶ An

¹⁸ Exhibit U at 4–5, 15.

¹⁹ Exhibits C, D, E, F, G, H, L, M, N, O, P, Q, R, S, and T.

²⁰ Exhibit U at 10–14.

²¹ Tr. 91–92.

²² Exhibits A and B.

²³ Tr. 90–91.

²⁴ *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).

²⁵ 484 U.S. at 531.

²⁶ Directive, ¶ 3.2.

unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁷

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁸ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³⁰ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³¹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³² The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.³³

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.³⁴ 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,³⁵ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive

²⁷ Directive, ¶ 3.2.

²⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁹ Directive, Enclosure 3, ¶ E3.1.14.

³⁰ Directive, Enclosure 3, ¶ E3.1.15.

³¹ Directive, Enclosure 3, ¶ E3.1.15.

³² *Egan*, 484 U.S. at 531.

³³ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

³⁴ Executive Order 10865, § 7.

³⁵ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

indebtedness or financial problems or difficulties.³⁶ 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.³⁷

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. Standing alone, the federal tax liens and back taxes raise serious security concerns. It should be obvious, but it is nonetheless stated here, that an applicant who is unwilling or unable to fulfill their federal income tax obligations is not a good candidate for a security clearance, which is a privilege granted by the federal government. Overall, his unfavorable financial history indicates inability or unwillingness to satisfy debts³⁸ and a history of not meeting financial obligations³⁹ 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

³⁶ 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).

³⁷ AG ¶ 18.

³⁸ AG ¶ 19(a).

³⁹ 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;⁴⁰

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, are sufficient to overcome and mitigate the security concerns stemming from Applicant's problematic financial history, which is largely unresolved and ongoing.

For reasons not entirely clear from the record, Applicant fell behind on his federal income tax obligations. The result is a number of federal tax liens for more than \$100,000 in back taxes owed to the IRS. Although he has not totally ignored this matter, he has not been particularly aggressive in attempting to resolve it by working with the IRS, which admittedly can be difficult. At this point, he has a request to enter into an installment agreement pending with the IRS, but the IRS is under no obligation to accept it, and the likelihood of the IRS accepting it is unknown at this time. Applicant is facing more than \$100,000 in back taxes. This is a major problem that will not be easily solved. Although he stated that he is now working with legal counsel and has a general plan to address these matters, that process has just begun. It is too soon to predict if or when he will resolve his federal tax problem and other financial problems. His financial problems are longstanding, he is financially overextended, and he has not reduced his delinquent debt in a measurable way.

The evidence of Applicant's ongoing federal tax problem along with his other financial problems justifies current doubts about his judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent standard, I resolve these

⁴⁰ 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).

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 gave due consideration to the whole-person concept.⁴¹ In particular, I gave Applicant credit for his years of honorable military service, his good employment record, and the actions he has taken, both in the past and at present, to address his financial problems. Although these matters weigh in his favor, they are not enough to mitigate and overcome the security concerns. Based on the evidence before me, 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.ii:	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

⁴¹ AG ¶ 2(a)(1)–(9).