



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



In the matter of:)
)
 -----) ISCR Case No. 11-10758
)
 Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

03/14/2013

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. The evidence shows he has a longstanding history of financial problems consisting of five unpaid judgments as well as five collection or charged-off accounts. He recently completed a loan-modification program for his mortgage loan, albeit after a judgment in foreclosure was obtained by the mortgage company. Nevertheless, the five unpaid judgments and five collection and charged-off accounts are unresolved, and he has only the most general of plans to resolve them. Applicant did not present sufficient evidence to 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 October 1, 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 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 February 21, 2013. The transcript (Tr.) was received March 4, 2013.

Findings of Fact

Applicant admits the five unpaid judgments for a total of about \$29,489, and the five collection or charged-off accounts for a total of about \$7,781, as alleged in the SOR. 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 43-year-old program analyst for a company engaged in defense contracting. He has had this job since March 2011, and he has a good employment record there as verified by three letters of recommendation.² He is seeking to obtain a security clearance for the first time, and he completed a security clearance application in May 2011.³ In doing so, he disclosed a number of derogatory financial accounts.

Applicant has been continuously employed since at least July 2002.⁴ He worked as a salesman during 2002–2006; had a part-time delivery job during 2009–2010; and as a contract administrator during 2006–2011. His annual salary as a program analyst was \$62,500 in 2012 and is \$64,000 in 2013. His spouse earns about \$39,000 annually working as a purchasing manager for manufacturing company. His educational background includes a high school diploma and some college. His first marriage was relatively brief and ended in divorce in 1998. He married his current spouse in 2002. He has two children in his household, a 17-year-old stepson and a 6-year-old daughter.

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 Exhibit B.

³ Exhibit 1.

⁴ Exhibit 1.

Applicant has a longstanding history of financial problems, which he does not dispute. His problematic financial history is confirmed by the documentary exhibits, which show, among other things, that the five unpaid judgments were taken against him during 2006–2010.⁵ He attributes his financial problems to periods of unemployment and underemployment.⁶ He was laid off from a job in 2001, and his spouse was laid off twice in the last ten years or so. In addition, although employed during 2002-2006, he earned less than he had in the past. As a result, he overextended on credit and incurred debts he could not afford to repay, to include falling behind on his mortgage loan.

Applicant defaulted on the mortgage loan in 2011, and the mortgage company obtained a judgment in foreclosure in July 2012.⁷ Notwithstanding the foreclosure judgment, Applicant and his family remained in the house and he kept working with the mortgage company to resolve the situation. After completing a three-month trial period during October–December 2012, the mortgage company agreed to modify the mortgage loan, and Applicant is now in good standing.⁸

Applicant presented documentary evidence that he paid (by garnishment of wages) two judgments that were not alleged in the SOR.⁹ One judgment was released in September 2008 and the second was released in December 2010.

Applicant has not paid, settled, entered into repayment agreements, or otherwise resolved any of the debts in the SOR.¹⁰ With that said, he made payments, again by garnishment of wages, on the unpaid judgment in SOR ¶ 1.a.¹¹ The payments ended in 2011, when he left his previous employer and the garnishment did not follow him to his current employer. Likewise, he made no effort with that particular creditor to resume the garnishment or initiate some other repayment option. He explained that his plan, now that the mortgage loan is current, is to contact the creditors, likely starting with the smallest debts first, and try to take care of them as quickly as he is able.¹² To that end, he has a positive cash flow of about \$900 monthly to use for debt repayment.¹³

⁵ Exhibits 2–6; Exhibits A and C–F.

⁶ Tr. 30–32, and 50; Exhibit A.

⁷ Exhibit 4.

⁸ Exhibit C; Tr. 33.

⁹ Exhibits D and E.

¹⁰ Tr. 35.

¹¹ Exhibit F.

¹² Tr. 48.

¹³ Tr. 41.

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

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

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).

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 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.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.

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 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 to consider under Guideline F.³⁰ Based on the evidence before me, none of the mitigating conditions are sufficient to fully mitigate the security concerns. In particular, AG ¶ 20(b) is not sufficient because the periods of unemployment and underemployment took place years ago and cannot be relied upon to explain the current circumstances. AG ¶ 20(c) is not sufficient because he has not received any financial counseling and there are not clear indications that his financial problems are resolved or under control. He does deserve credit for successfully modifying his mortgage loan just a few months ago. Understandably, that was a high-priority item. With that said, AG ¶ 20(d) is not sufficient because, overall, he has not made a good-faith effort to repay his indebtedness. I also note that paying on the judgments by garnishments is not a good-faith effort because it was involuntary on his part.³¹

Of course, a security clearance case is not aimed at collecting debts.³² 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.³³

³⁰ AG ¶¶ 20(a)–(f).

³¹ 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).

³² ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

³³ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

Here, the evidence fails to establish that Applicant has established a plan to resolve his financial problems and taken significant actions to implement that plan. Applicant stated he has a general plan to address his debts starting with the smallest debt first. He offered no details or specifics because he had none. Likewise, he has had zero communication with his creditors. Given these circumstances, I assess his generalized plan as speculative and unrealistic as opposed to a reasonable plan with follow-on actions. To sum up, Applicant has not established a documented track record of remedial actions sufficient to mitigate the security concerns under the Appeal Board's standard.

Applicant's longstanding 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-person concept.³⁴ 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.j:	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

³⁴ AG ¶ 2(a)(1)–(9).