



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



In the matter of:)	
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)	ISCR Case No. 11-11566
Applicant for Security Clearance)	

Appearances

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

07/18/2013

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. His history of financial problems or difficulties is largely due to a lack of health insurance and a business failure, a daycare center that he owned and operated during 2008–2010. With assistance from his employer, he recently initiated a good-faith effort to repay the vast majority of his delinquent debts by repaying approximately \$22,000. He presented sufficient evidence to explain, extenuate, and mitigate the financial considerations security concern. Accordingly, this case is decided for Applicant.

Statement of the Case

On December 4, 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 timely answered the SOR and requested a hearing. The case was assigned to me on May 15, 2013. The hearing took place by video teleconference as scheduled on June 25, 2013. The transcript was received on July 2, 2013. The record was kept open until July 15, 2013, to allow Applicant to present additional documentary evidence. Those matters were timely received and they are admitted without objections as Exhibits F–K.

Findings of Fact

In his answer to the SOR, Applicant denied the \$964 collection account in SOR ¶ 1.q. He admitted the remaining allegations under Guideline F, which alleged 18 delinquent accounts in amounts ranging from \$100 to \$12,311 for a total of about \$31,000; 12 accounts are delinquent medical accounts. 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 34-year-old employee of a federal contractor. He is seeking to obtain a security clearance for his job working as an information technology (IT) specialist in systems integration and networks. He began that job in February 2010, and he completed a security clearance application in May 2011.²

Applicant's employment history includes enlisted service in the U.S. Marine Corps (active reserve) during 1998–2001. He worked as a contract guard for the U.S. Marshals Service during 1999–2002. He also worked for his family's business, a daycare center, on a periodic or part-time basis during 1994–2008. He then opened his own daycare center, in a different community, in September 2008. The daycare center was never profitable and it ceased operations in late 2009 or early 2010.

Applicant married in 1997; he divorced in 2004; and he and his ex-wife are now living together with their six children, ages 15, 14, 12, 10, 9, and 5-months. He is the main bread winner. His job as an IT specialist requires extensive business travel. He earned about \$15 per hour when he began his job in 2010. His work responsibilities increased along with his pay, and he is now earning about \$24.50 per hour. He earned about \$86,000 in 2012, as he regularly worked more than 40 hours weekly.

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 Exhibit 1.

There is substantial evidence establishing that Applicant has a history of financial problems or difficulties.³ He attributes his adverse history to the 2008–2010 period when he owned and operated the daycare center. He believes the business failed due to the downturn in the economy that began in late 2008. He could not afford health insurance during this time, and so he, his ex-wife, and children were uninsured. The 19 delinquent accounts in the SOR fall into three categories: (1) 12 medical accounts; (2) six consumer accounts; and (3) a deficiency balance stemming from a repossession of an auto in 2009.

In advance of the hearing, Applicant's employer approached him and offered to hire an attorney to represent him. Applicant suggested his employer forgo paying attorney's fees and instead authorize a payroll advance or loan for him to repay his delinquent debts. Given that much of the debt is related to uninsured medical care, his employer agreed and they memorialized their agreement in a letter dated June 24, 2013.⁴ The next day the employer deposited \$22,382 into Applicant's account.⁵ He then spent \$22,445 to resolve ten medical accounts and the repossession. He will repay his employer via payroll deductions of \$500 monthly with no interest due.

The 12 medical accounts range in amounts from \$100 to \$5,714 for a total of about \$16,271. (SOR ¶¶ 1.a–1.i, 1.k, 1.l, and 1.p) The debts were incurred for necessary medical care and treatment during office calls or trips to the emergency room for Applicant or his family. Applicant resolved ten medical accounts owed to two creditors in the sums of \$15,390 and \$4,035, respectively, which is more than alleged in the SOR.⁶ The other two medical accounts for \$670 and \$408 (SOR ¶¶ 1.k and 1.l) were not addressed in his payment documents.

The deficiency balance of \$12,311 stemmed from a repossession in about 2009. (SOR ¶ 1.m) Applicant resolved it with a lump-sum payment of \$3,000 as full and complete settlement of the account.⁷

The six consumer debts range in amounts from \$282 to \$964 for a total of about \$3,419. (SOR ¶¶ 1.j, 1.n, 1.o, 1.q, 1.r, and 1.s) Applicant is disputing the debt in SOR ¶ 1.q as well as the debt in SOR ¶ 1.r. He is disputing the latter, a \$964 collection account, because he continues to have an open and current account with the original creditor. And he provided documentary information to that effect.⁸ He is disputing the

³ Exhibits 2–7.

⁴ Exhibit A.

⁵ Exhibit G at 2.

⁶ Exhibits G, I, and K.

⁷ Exhibits H and J.

⁸ Exhibit E.

former, a \$681 collection account, because he believes he paid the debt to another creditor.⁹ He provided documentary proof of payment to that creditor.¹⁰

Concerning the other four consumer accounts, the \$549 charge-off account in SOR ¶ 1.j remains past due.¹¹ Applicant believes he paid the \$400 collection account in SOR ¶ 1.n, but did not have documentary proof of payment.¹² The debt appears on a 2011 credit report, but it does not appear on credit reports from 2012 or 2013.¹³ He paid the \$282 collection account in SOR ¶ 1.o.¹⁴ He also believes he paid the \$543 collection account in SOR ¶ 1.s, but did not have documentary proof of payment. I am unable to find proof of that debt in the multiple credit reports or interrogatories.¹⁵ In addition to those accounts, he presented proof of payment for five other accounts.¹⁶

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁷ 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.”¹⁸ 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.¹⁹ An

⁹ Tr. 81–83.

¹⁰ Exhibit C at 7; Exhibit D at 23, 40 and 43 of 65.

¹¹ Exhibit D at 44 of 65.

¹² Tr. 73–75.

¹³ Exhibits 4, 5, 6, 7, and D.

¹⁴ Tr. 75–76; Exhibit C at 1.

¹⁵ Exhibits 2,3, 4, 5, 6, 7, and D.

¹⁶ Exhibit C at 2, 3, 4, 5, and 6.

¹⁷ *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).

¹⁸ 484 U.S. at 531.

¹⁹ 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.²⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁴ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁵ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁶

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.²⁷ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

²⁰ Directive, ¶ 3.2.

²¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²² Directive, Enclosure 3, ¶ E3.1.14.

²³ Directive, Enclosure 3, ¶ E3.1.15.

²⁴ Directive, Enclosure 3, ¶ E3.1.15.

²⁵ *Egan*, 484 U.S. at 531.

²⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁷ Executive Order 10865, § 7.

Discussion

Under Guideline F for financial considerations,²⁸ 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.²⁹ 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.³⁰

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 debts³¹ and a history of not meeting financial obligations.³² The facts are more than sufficient to establish these two disqualifying conditions. In reaching this conclusion, I considered that 12 debts in the SOR are medical collection accounts. As such, I gave those debts less weight because they were incurred for necessary medical care and treatment, not consumer goods, luxuries, or frivolous items, and they are not the type of debt that indicates poor self-control, lack of judgment, unwillingness to abide by rules and regulations, misconduct, or irresponsible behavior.

There are six mitigating conditions under Guideline F,³³ and I have especially considered the following:

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

²⁸ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁹ 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).

³⁰ AG ¶ 18.

³¹ AG ¶ 19(a).

³² AG ¶ 19(c).

³³ AG ¶¶ 20(a)–(f).

separation), and the individual acted responsibly under the circumstances;
and

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

Applicant is a 34-year-old IT specialist who is enjoying success working for a federal contractor as shown by his increasing responsibilities and pay. He does not dispute his adverse financial history, which is largely due to a lack of health insurance and a business failure. His current employer has high regard for him as shown by the payroll advance or loan of about \$22,000. He used that money to retire ten delinquent medical accounts and a deficiency balance owed from a repossessed vehicle. Although his payments are quite recent, it is understandable given that he began his current job coming out of a business failure. Under that circumstance, it is not surprising that he lacked extra money to repay his delinquent debts while at the same time providing for his large family. Moreover, his recent payment of more than \$22,000 to resolve delinquent debts is indicative of both good faith and responsible behavior. In doing so he resolved the vast majority of his delinquent debts. In addition, concerning the six consumer accounts, he is disputing two, he paid one of the accounts and believes he paid another, another is unresolved, and one consumer account is lacking proof of its existence. The remaining unresolved debts can be addressed in due course.

Of course, a security clearance case is not aimed at collecting debts or enforcing tax laws.³⁴ 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.³⁵

³⁴ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

³⁵ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

Based on the available evidence, I am persuaded that Applicant has taken enough significant actions to mitigate the security concern under Guideline F.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating the evidence in light of the whole-person concept,³⁶ I conclude Applicant presented sufficient evidence to explain, extenuate, and mitigated 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
Subparagraphs 1.a–1.s:	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

³⁶ AG ¶ 2(a)(1)–(9).