



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



In the matter of:)
)
-----) ISCR Case No. 11-14233
)
Applicant for Security Clearance)

Appearances

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

01/09/2014

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 that includes multiple bankruptcy cases and back taxes owed to state and federal tax authorities. He did not present sufficient evidence to mitigate the financial considerations security concern. Accordingly, this case is decided against Applicant.

Statement of the Case

On June 24, 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 guidelines known as Guideline F for financial considerations and Guideline E for personal conduct (falsification).²

Applicant answered the SOR on July 11, 2013, and requested a hearing. The case was assigned to me September 11, 2013. The hearing was scheduled for October 8, 2013, but was cancelled due to the shutdown of the federal government. The case was rescheduled and heard on November 19, 2013. The record was kept open until December 2, 2013, to allow Applicant to present documentary information concerning the falsification allegation under Guideline E. Applicant was unable to obtain such information, and the record closed December 2, 2013. The transcript (Tr.) was received November 27, 2013.

Findings of Fact

Applicant admits all the SOR allegations under Guideline F. 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 46-year-old employee of a federal contractor. His first marriage ended by divorce, he remarried in 1996, and he and his wife have a 16-year-old daughter. His educational background includes a high school diploma as well as certificates from technical schools received in 1998, 2004, and 2010. He is seeking to obtain a security clearance for his job as a coating technician, a job he has held since June 2011. To that end, he completed a security clearance application in July 2011.³

A review of Applicant's security clearance application indicates a degree of instability based on his employment history and multiple residences. Including his current job, he has held six different jobs from 2003 to present, and he was

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 The falsification allegation in SOR ¶ 2(a) alleges that in September 2011 Applicant made a false statement during an official background investigation when he denied missing a payment for his most recent Chapter 13 bankruptcy case. Although his statement was factually incorrect, I am not persuaded it was deliberately false because he was operating under a mistaken belief or notion at the time due to his interactions with his bankruptcy attorney. Accordingly, the falsification allegation is decided for Applicant, and this subject will not be discussed further herein.

³ Exhibit 1.

unemployed from April 2010 to June 2011. And he has had eight different residential addresses in two states during 1998–to 2013.

Applicant has a longstanding history of financial problems that is ongoing.⁴ As alleged in the SOR, his history includes multiple bankruptcy cases and back taxes owed to state and federal tax authorities. In addition, the SOR alleged 16 delinquent debts.

Applicant has had three bankruptcy cases ending in discharge.⁵ The first case, under Chapter 13, was filed in 1993 and ended in a discharge in 1996. It was a joint case with his then first wife. He attributes part of his financial problems at that time to his first wife's substance-abuse problem.⁶ The second case, under Chapter 7, was filed and discharged in 2003. It was a joint case with his current wife. The third case, initially under Chapter 13, was filed in 2008 and ended in a discharge under Chapter 7 in 2012. It was also a joint case with his current wife. The bankruptcy petition listed \$11,660 in secured debt (two auto loans), \$14,869 in unsecured priority debt (back taxes owed to the IRS and the state), and \$19,842 in unsecured nonpriority debt (typical consumer debts). Applicant defaulted on the court-approved payment plan in 2010 and 2011, and it was converted to a Chapter 7 case in September 2011. A discharge was granted in January 2012. The bankruptcy paperwork shows that \$9,984 was disbursed to creditors while the Chapter 13 payment plan was in effect.

Applicant owes back taxes to the IRS, which he is endeavoring to resolve.⁷ The SOR alleged an indebtedness of \$12,996 for multiple tax years; the most recent bankruptcy paperwork shows a balance of \$17,039 as of October 2011; and paperwork from the IRS shows a balance of \$18,672 for tax years 2005, 2006, 2007, 2009, and 2010, as of September 2013. Applicant made arrangements to resolve his account with the IRS in February 2013, when he entered into an installment agreement to pay \$75 monthly beginning in March 2013. In addition, in about January 2013, he filed paperwork with the IRS asking for a determination, for federal tax purposes, concerning his work relationship with a previous employer. He believes if he prevails, and is found to be an employee instead of an independent contractor, his federal tax indebtedness will decrease. His request was pending with the IRS at the time of the hearing in this case.

Applicant owes back taxes to his state of current residence, and this matter is not resolved. The most recent bankruptcy paperwork shows a balance of about \$445 owed to a state tax commission for tax year 2007. In addition, a state tax lien for \$1,344 was

⁴ Exhibits 2–7.

⁵ Exhibit 2.

⁶ Tr. 51–52.

⁷ Exhibits A–C.

filed against Applicant in February 2012.⁸ That lien is in addition to a state tax lien for \$2,140 filed and released in 1996, and a state tax lien for \$1,618 filed and released in 1997. Applicant presented no documentation of the current status of the back taxes owed the state, but indicated he and his wife are working on it.

The SOR alleged 16 delinquent accounts in amounts ranging from \$8 to \$13,867 for a total of about \$28,634. Of those 16 debts, many were included in the most recent bankruptcy case. Specifically, Department Counsel conceded that the seven debts in SOR ¶¶ 1(g) for \$30, 1(h) for \$8, 1(i) for \$18, 1(j) for \$36, 1(p) for \$164, 1(q) for \$55, and 1(s) for \$533 were discharged in the bankruptcy case.⁹ Accordingly, these seven debts are decided for Applicant due to this duplication.

Of the nine remaining debts, the two largest, alleged in SOR ¶¶ 1(u) and 1(v), stem from secured loans obtained from the same credit union to buy autos. Both accounts are listed in the 2011 credit report, but neither are listed in credit reports from 2012 and 2013.¹⁰ One of those autos, a Chevy Silverado, was redeemed through the bankruptcy case in 2013 for the amount of \$7,500, of which \$6,500 had been paid by Applicant, leaving a \$1,200 balance due to the credit union.¹¹ Applicant paid the balance due upon entry of the redemption order, and the Silverado is now in his possession. The other auto, a Nissan Xterra, was surrendered to the credit union during the bankruptcy case. Applicant stated he has not received notice of a deficiency from the credit union after the Xterra was sold. In light of these facts and circumstances, SOR ¶¶ 1(u) and 1(v) are decided for Applicant.

The other seven debts for a total of about \$1,346, which have not been specifically discussed, were not included in the bankruptcy case as far as I can determine. Applicant did not present any documentary evidence showing that he has paid, settled, entered into repayment agreements, disputed, or otherwise resolved those seven debts.

Applicant's current financial situation is difficult. In a recent (2012 or 2013) personal financial statement, he indicated that expenses exceeded income resulting in a negative net remainder of about \$1,089 per month.¹² During the hearing, he modified

⁸ Exhibit 4.

⁹ Tr. 20.

¹⁰ Exhibits 5, 6, and 7.

¹¹ Exhibit 2.

¹² Exhibit 3.

that by stating that he felt that he and his wife were climbing out of a financial hole.¹³ He estimated their 2012 household income at less than \$60,000.¹⁴

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁵ 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.”¹⁶ 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.¹⁷ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁸

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁰ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²¹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²² In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²³

¹³ Tr. 67–72.

¹⁴ Tr. 45.

¹⁵ *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).

¹⁶ 484 U.S. at 531.

¹⁷ Directive, ¶ 3.2.

¹⁸ Directive, ¶ 3.2.

¹⁹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁰ Directive, Enclosure 3, ¶ E3.1.14.

²¹ Directive, Enclosure 3, ¶ E3.1.15.

²² Directive, Enclosure 3, ¶ E3.1.15.

²³ *Egan*, 484 U.S. at 531.

The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁴

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.²⁵ 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,²⁶ 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.²⁷ 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.²⁸

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

²⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁵ Executive Order 10865, § 7.

²⁶ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁷ 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).

²⁸ AG ¶ 18.

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 debts²⁹ and a history of not meeting financial obligations.³⁰ The facts are more than sufficient to establish these disqualifying conditions. And the same facts support a conclusion of financial irresponsibility.

There are six mitigating conditions under Guideline F.³¹ Based on the evidence before me, none of the mitigating conditions, individually or in combination, are sufficient to fully mitigate the security concern. Applicant has a longstanding history of financial problems, which is ongoing. It includes three bankruptcy cases, the most recent of which began in 2008 under Chapter 13 but was converted to a Chapter 7 case in 2011 after he defaulted on the payment plan. With three bankruptcy cases ending in discharge in 1996, 2003, and 2012, it suggest he intends to manage his finances by seeking bankruptcy protection every seven to nine years or so. Moreover, he continues to owe back taxes to both state and federal tax authorities, and it is difficult to predict if or when he will resolve those matters.

With that said, I am not overly concerned about the seven debts for \$1,346 in unresolved consumer debt. Viewed in light of the facts and circumstances of this case, those debts are relatively minor and they add little to the analysis. No doubt, some of Applicant's financial difficulties may be traced to his failed first marriage and an unsteady or inconsistent employment history, including a period of unemployment during 2010–2011. Nonetheless, those matters are not sufficient to overcome the totality of his adverse financial history.

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

²⁹ AG ¶ 19(a).

³⁰ AG ¶ 19(c).

³¹ AG ¶¶ 20(a)–(f).

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

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

Here, the evidence does not support a conclusion that Applicant has established a plan and taken actions to implement that plan sufficient to mitigate the security concern under the Appeal Board's standard.

Applicant's history of financial problems raises doubt about his judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent standard, I resolve the doubt 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.f:	Against Applicant
Subparagraphs 1.g–1.v:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For 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

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

³⁴ AG ¶ 2(a)(1)–(9).