



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



In the matter of:)
)
-----) ISCR Case No. 11-14508
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

07/02/2014

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him a security clearance to work in the defense industry. The evidence shows Applicant has a history of federal tax problems consisting of tax liens and more than \$30,000 in back taxes. He did not present sufficient evidence to explain and mitigate the financial considerations security concern. Accordingly, this case is decided against Applicant.

Statement of the Case

On May 8, 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

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*

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 June 25, 2013, and requested a hearing.

Department Counsel indicated they were ready to proceed on April 4, 2014. The case was then assigned to me on April 9, 2014. The hearing was held June 5, 2014. At the hearing, Department Counsel presented Exhibits 1–5, which were admitted. Likewise, Applicant presented Exhibits A–F, which were admitted, and he testified on his own behalf. The transcript (Tr.) was received June 13, 2014.

The record was kept open until June 30, 2014, to provide Applicant additional time to present documentary evidence concerning his efforts to resolve the back taxes. (Tr. 74–81) Post-hearing matters were timely received on June 27, 2014, and they are admitted without objections as Exhibit G.

Findings of Fact

The SOR alleged a history of financial problems or difficulties consisting of: (1) a Chapter 7 bankruptcy case discharged in 2005; (2) a state tax lien for \$685 filed in December 2010; (3) federal tax liens for \$4,272 and \$27,586, both filed in August 2009; and (4) a charged-off consumer account for \$7,371. In his answer to the SOR, Applicant admitted the allegations except for the charged-off account, which he denied. 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 37-year-old software engineer who is seeking a security clearance for the first time. He completed a security clearance application in June 2011 in which he disclosed a 2005 bankruptcy case, a 2006 home foreclosure, and unresolved tax problems with state and federal tax authorities. It is that application which is under consideration here.

Applicant has worked for the same company since June 2010. His work consists of writing software and assisting in the sales of software. About six months later in January 2011, he was contracted to another company, which is the sponsor for his security clearance. Before that, he was self-employed as a consultant working for numerous firms for several years. He has had no period of unemployment during the last ten years. (Tr. 45)

Applicant's first and second marriages ended in divorce. He married for the third time in August 2013. He has two children, ages 13 and 10, from his first marriage. He stated that he has met his child-support obligation over the years, and he expects the 10-year-old child to soon begin living with him on a full-time basis. (Tr. 62–64) That

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.

arrangement, which he expects to be permanent, will decrease the child-support payment by half to \$600 monthly.

Concerning SOR ¶ 1.a, Applicant attributes the 2005 Chapter 7 bankruptcy case to his first marriage. (Tr. 33–35) Divorced in late 2004, he assumed a large amount of unsecured credit card debt that he was unable to repay. He estimated the bankruptcy discharge covered \$30,000 to \$40,000 in indebtedness.

Concerning SOR ¶ 1.b, a state tax lien for \$685 was entered against Applicant in December 2010, because he failed to file a particular form with the state when he was self-employed. (Tr. 36–38) He presented documentary proof that the lien was paid or satisfied in July 2013. (Exhibit A) In addition, the credit reports reveal a second state lien for \$812 entered against Applicant in November 2010. (Exhibits 3–5) The credit reports show the lien was satisfied in May 2011.²

Concerning SOR ¶¶ 1.c and 1.d, federal tax liens were entered against Applicant in August 2009 for a total of \$31,858 in back taxes. (Tr. 38–44; Exhibits 3–5) He attributes the back taxes to his self-employment when he did not pay estimated income taxes on a quarterly basis. (Tr. 38) His plan is to make monthly payments through an installment agreement with the IRS, and he is working with a certified public accountant (CPA) to arrange an agreement wherein he pays about \$500 monthly. (Tr. 61) In his post-hearing matters, he submitted documentation showing that he will make an \$828 monthly payment through an installment agreement with the IRS beginning July 28, 2014. (Exhibit G) The documentation states the agreement covers tax periods 2004–2013, and a total amount owed in back taxes is not shown.

Applicant hired the CPA to assist him in preparing state and federal tax returns for 2012 and 2013 after severing a relationship with the accountant who prepared returns for 2009, 2010, and 2011. (Tr. 39) Applicant provided copies of his 2012 and 2013 returns, which were filed on or about May 29, 2014, a few days before the hearing. (Exhibits E and F) The 2012 returns show a balance due of \$459 for federal taxes and a refund of \$868 for state taxes. The 2013 returns show a balance due of \$11,754 for federal taxes, a refund of \$716 from one state, and a balance due of \$177 to another state. The large balance due the IRS results from his marriage in 2013 and a corresponding increase in taxable income as a dual-income couple filing jointly. His plan to pay the balances due is to liquidate assets from brokerage accounts and pay the amounts in full. In his post-hearing matters, he submitted proof of payment, made on or about June 21, 2014, for the 2012 and 2013 state and federal income taxes. (Exhibit G)

² Because the second state tax lien was not alleged in the SOR, I have considered it for the limited purpose of assessing the frequency of such events.

In addition to the federal tax liens and back taxes, Applicant has a history or pattern of filing federal income tax returns on an untimely basis.³ Beside the late filing of the 2012 federal return, his federal returns in 2006, 2007, 2008, 2009, and 2010 were filed late, despite extensions being granted each year. (Tr. 50–54; Exhibit 2)

Concerning SOR ¶ 1.e, Applicant has consistently denied responsibility for the \$7,317 charged-off account, and he explained that he has never had an account with the creditor, a large bank. (Tr. 31–33; Exhibit 2) A 2011 credit report lists this debt as a credit card account that was then more than 120-days past due in the amount of \$1,522 with a balance of \$7,317. (Exhibit 3) A 2013 credit report lists this debt with similar information. (Exhibit 4) And a 2014 credit report does not list this debt. (Exhibit 5) Applicant stated that his debt has not appeared in his personal credit report, which he did not provide, and he has contacted the creditor and been told that there is no record of an account for him.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁴ 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.”⁵ 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.⁶ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁷

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁸ The Government has the burden of presenting

³ Because the untimely filed returns were not alleged in the SOR, I have considered them for the limited purpose of assessing the frequency, recency, and extent of Applicant’s federal tax problems.

⁴ *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).

⁵ 484 U.S. at 531.

⁶ Directive, ¶ 3.2.

⁷ Directive, ¶ 3.2.

⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

evidence to establish facts alleged in the SOR that have been controverted.⁹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁰ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹¹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹² The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹³

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.¹⁴ 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,¹⁵ 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.¹⁶ 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

⁹ Directive, Enclosure 3, ¶ E3.1.14.

¹⁰ Directive, Enclosure 3, ¶ E3.1.15.

¹¹ Directive, Enclosure 3, ¶ E3.1.15.

¹² *Egan*, 484 U.S. at 531.

¹³ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁴ Executive Order 10865, § 7.

¹⁵ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁶ 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).

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.¹⁷

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 federal tax problems that raise a serious concern. He has a seriously delinquent tax debt as demonstrated by the filing of federal tax liens in 2009 for \$31,858 in back taxes. In addition, with any penalty or interest or both, it's likely that the amount owed is a larger sum five years later in 2014. 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. His federal tax problems indicate inability or unwillingness to satisfy debts¹⁸ and a history of not meeting financial obligations¹⁹ within the meaning of Guideline F. The facts are sufficient to establish those two disqualifying conditions, and the facts also suggest a pattern of financial irresponsibility.

With that said, I attach little security significance to Applicant's 2005 Chapter 7 bankruptcy case. It took place nearly ten years ago, and it addressed unsecured credit card debt incurred during his first marriage. I also attach little security significance to the \$685 state tax lien, which was filed in 2010 and paid or satisfied in 2013. It involved a small sum of money, and it was paid or satisfied nearly a year ago. And I attach little security significance to the charged-off account for \$7,371. He has consistently denied responsibility for this account, and it does not appear on the Government's most recent credit report from April 2014. For all those reasons, SOR ¶¶ 1.a, 1.b, and 1.e are decided for Applicant.

Addressing the federal tax liens and back taxes, none of the six mitigating conditions under Guideline F are sufficient to fully mitigate the concern stemming from those matters.²⁰ To his credit, he disclosed those matters in his 2011 security clearance application. But otherwise, he did little during 2009–2013 to resolve his federal tax problems. His recent effort in 2014 working with a CPA is a step in the right direction, but not enough to mitigate the concern. He has not acted with reasonable diligence expected of someone under similar circumstances. At this point, it is simply too soon to tell if Applicant will adhere to an installment agreement he has just made with the IRS and fulfill his federal tax obligations in the future.

¹⁷ AG ¶ 18.

¹⁸ AG ¶ 19(a).

¹⁹ AG ¶ 19(c).

²⁰ AG ¶¶ 20(a)–(f).

Of course, a security clearance case is not aimed at collecting debts or enforcing tax laws.²¹ 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.²²

Here, the evidence does not support a conclusion that Applicant has established a plan and taken steps to implement that plan sufficient to mitigate the concern stemming from his federal tax liens and back taxes. If anything, his track record militates against a favorable clearance decision.

Applicant's history of federal tax problems raises doubt about his judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent standard, I resolve that 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.²³ Nonetheless, he has not met 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

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

²² ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

²³ AG ¶ 2(a)(1)-(9).

Subparagraphs 1.a, 1.b, and 1.e:	For Applicant
Subparagraphs 1.c and 1.d:	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