



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



In the matter of:)
)
-----) ISCR Case No. 12-00122
)
Applicant for Security Clearance)

Appearances

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

01/10/2014

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for a security clearance to work in the defense industry. The evidence shows he has a history of financial problems that is unresolved and ongoing. 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 5, 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 guideline known as Guideline F for financial considerations.

Applicant answered the SOR on July 9, 2013, and he requested a hearing on July 19, 2013. The case was assigned to me September 11, 2013. The hearing was scheduled for October 9, 2013, but was cancelled due to the shutdown of the federal government. The case was rescheduled and heard on November 21, 2013. The transcript (Tr.) was received December 3, 2013.

Applicant did not present any documentary evidence at the hearing. I exercised my discretion to keep the record open until December 13, 2013, to allow Applicant to present documentary information.² To date, no such matters were received.

Findings of Fact

Applicant is a 33-year-old employee of a federal contractor. Married for nearly nine years, he and his wife have an infant son. His wife is not employed outside the home. His educational background includes a high school diploma.

Applicant is seeking to retain a security clearance previously granted to him. He is employed as an instructor at a military installation, a job he has held since 2011. He earns about \$42,000 annually from this job. In addition, he serves in a state national guard unit, and he earns about \$240 for each weekend drill he completes. Other than a small balance in a 401(k) account, Applicant stated he had no other financial resources. He agreed with his wife's assessment that they were living paycheck to paycheck, he stated that his checking account was currently overdrawn in advance of payday, and he does not have a savings account.³

Applicant's employment history includes enlisted service in the U.S. Army during 2002–2011. He was trained and worked as a field artillery fire-direction specialist. His service included three tours of duty (about three years) in Iraq assigned to one of the Army's premier combat divisions. He reports that he suffered no wounds or injuries, and he is not receiving any type of medical care due to his military service. He received an honorable discharge upon his departure from the Army.

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 Tr. 54–60; 64–66.

³ Tr. 46–48.

Applicant has a history of financial problems that is ongoing. The SOR alleges 18 accounts in some form of delinquency (e.g, collection or charged off) in amounts ranging from a \$39 collection account for a cable TV bill to a \$14,992 charged-off account for a car loan. The 18 accounts total approximately \$51,995 in delinquent debt. In his answer to the SOR, he admitted approximately \$41,578 in debts, and he denied the debts alleged in SOR ¶¶ 1(c), 1(d), 1(k), 1(m), 1(n), and 1(p). The 18 accounts alleged in the SOR are established by his admissions and credit reports from 2011 and 2013.⁴

Applicant did not present any documentary evidence showing that he has paid, settled, entered into repayment agreements, disputed, or otherwise resolved any of the 18 debts. At the hearing, he and his wife stated that they were attempting to dispute various matters, but they did not offer any specifics. Nor did he have a specific plan concerning how they would address the admitted debts.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁵ 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.”⁶ 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.⁷ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁸

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁰ An

⁴ Exhibits 3–4.

⁵ *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).

⁶ 484 U.S. at 531.

⁷ Directive, ¶ 3.2.

⁸ Directive, ¶ 3.2.

⁹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁰ Directive, Enclosure 3, ¶ E3.1.14.

applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹¹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹² In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹³ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁴

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.¹⁵ 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,¹⁶ 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.¹⁷ 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

¹¹ Directive, Enclosure 3, ¶ E3.1.15.

¹² Directive, Enclosure 3, ¶ E3.1.15.

¹³ *Egan*, 484 U.S. at 531.

¹⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁵ Executive Order 10865, § 7.

¹⁶ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁷ 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).

questions about an individual's reliability, trustworthiness, and ability to protect classified information.¹⁸

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 debts¹⁹ and a history of not meeting financial obligations.²⁰ 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.²¹ 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 history of financial problems that is ongoing. He is facing a small mountain of delinquent debt (approximately \$50,000), and he has, at best, only a generalized plan of how he intends to address his indebtedness. At the hearing, he did not present documentary evidence showing that he has made an effort to pay, settle, make arrangements to repay, dispute, or otherwise resolve his indebtedness. Likewise, he did not submit documentation post-hearing.

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

¹⁸ AG ¶ 18.

¹⁹ AG ¶ 19(a).

²⁰ AG ¶ 19(c).

²¹ AG ¶¶ 20(a)–(f).

²² ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

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.²³

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.²⁴ I gave substantial weight to Applicant's nine years of honorable military service, which included three tours of combat in Iraq. Indeed, I have great respect and appreciation for his military service. Nonetheless, 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.r:	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

²³ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

²⁴ AG ¶ 2(a)(1)–(9).