



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



In the matter of:)
)
-----) ISCR Case No. 12-03419
)
Applicant for Security Clearance)

Appearances

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

01/14/2014

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 18, 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 11, 2013, and requested a hearing. The case was assigned to me September 11, 2013. The hearing was scheduled for October 10, 2013, but was cancelled due to the shutdown of the federal government. The case was rescheduled and heard on November 20, 2013. At the hearing, Department Counsel presented Exhibits 1–6, which were admitted.² Likewise, Applicant presented Exhibits A–G, which were admitted.³ Applicant testified on his own behalf, but he called no other witnesses. The transcript (Tr.) was received December 3, 2013.⁴

Findings of Fact

Applicant is a 47-year-old employee of a federal contractor. He is seeking to upgrade an existing security clearance to a higher level. He is employed as an instructor at a military installation, a job he has held since 2007, and he earns about \$62,000 annually.⁵ He reported having a balance of less than \$15,000 in his employer's 401(k) plan. He also reported having a checking account balance of about \$400. Otherwise, he has no other financial accounts.

Applicant's employment history includes enlisted service in the U.S. Army during 1987–2007. He was trained and worked in field artillery as a forward observer. His service included a tour of duty in Afghanistan during 2004–2005, when he was assigned to one of the Army's combat divisions. He received an honorable discharge upon his retirement from the Army. As a military retiree, he receives about \$995 in monthly net pay, and he also receives about \$395 in monthly disability compensation from the Department of Veterans Affairs.⁶ As of July 2013, he reported a monthly net remainder of about \$3,000 monthly.⁷

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. 21–23.

³ Tr. 23–29.

⁴ I note that the transcript incorrectly reports the exhibits and witnesses. Tr. 2–4.

⁵ Exhibits A and F.

⁶ Exhibit G.

⁷ Exhibit A.

Applicant has a history of financial problems that is ongoing. The SOR alleges 22 accounts in some form of delinquency (e.g., past due, collection, or charged off) in amounts ranging from a \$63 charged-off account to a \$17,096 collection account for a total of approximately \$51,995 in delinquent debt. Two of those accounts are state tax liens entered against Applicant for \$2,903 and \$3,537.⁸ In his answer to the SOR, he denied the debts alleged in SOR ¶¶ 1.c, 1.g, 1.l, 1.q, 1.r, and 1.v; he admitted the remaining debts without explanation.

The \$12,597 collection account in SOR ¶ 1.c and the \$17,096 collection account in SOR ¶ 1.g relate to the same debt, allegedly a balance due after a residential lease was broken. Applicant maintains the debt resulted from his ex-wife agreeing to a lease without his knowledge and without his signature.⁹ He presented a copy of the lease, which bears two signatures (his and his ex-wife's) that are similar in appearance.¹⁰ The signatures do not match his signature in his security clearance application, his response to interrogatories, or his answer to the SOR. He also presented an April 2013 letter from the collection agency stating that collection efforts on the account were withdrawn in March 2011.¹¹ Given these circumstances, these two debts are resolved for Applicant.

The \$3,100 past-due account in SOR ¶ 1.l and the \$2,500 past-due account in SOR ¶ 1.q relate to the same debt. Applicant presented an April 2013 letter from the creditor stating that the account was in the collections department with a current balance of \$463.¹² Given the duplication, one of the accounts (SOR ¶ 1.q) is resolved for Applicant, but the account remains in collection with a \$463 balance.

The \$63 charged-off account in SOR ¶ 1.r is resolved. Applicant presented an April 2013 letter from the collection agency stating the debt was paid in full.¹³

The \$758 past-due account in SOR ¶ 1(v) is unresolved.¹⁴ Applicant stated that the debt is not his obligation, but he presented no paperwork supporting his claim or dispute.

⁸ Exhibits 4–6.

⁹ Tr. 30–32.

¹⁰ Exhibit E.

¹¹ Exhibit D.

¹² Exhibit B.

¹³ Exhibit C.

¹⁴ Exhibit 4 at 6.

The remaining 16 debts in the SOR amount to about \$17,000 in delinquent debt, and they are established by his admissions and documentary exhibits.¹⁵ Applicant did not present documentary evidence showing that he has paid, settled, entered into repayment agreements, disputed, or otherwise resolved any of the 16 debts.

Concerning the back taxes, credit reports show state tax liens were filed against Applicant in March 2011 for \$3,537 and August 2011 for \$2,903 (as opposed to 2004 and 2005 as alleged in SOR ¶¶ 1.a and 1.b).¹⁶ In his May 2013 response to interrogatories, he stated that the state tax authority was unwilling to agree to an installment payment agreement, and so he intended to pay \$100 monthly to resolve the back taxes.¹⁷ He did not present documentation showing proof of payment or reduction of the balances owed to the state. In addition, he has an installment payment agreement with the IRS to pay about \$10,000 in back taxes owed for tax years 2003–2012, for which he is paying \$300 monthly.¹⁸

Applicant attributed his financial problems to a combination of inattention and a lackadaisical attitude on his part as well as conduct of his ex-wife before they were divorced.¹⁹ In his May 2013 response to interrogatories, Applicant included a financial payment plan to pay 18 creditors a total of \$11,707 over 23 months via monthly payments of \$100 or \$50.²⁰ He stated he had the means to do so based on a monthly net remainder of about \$3,000. At the hearing, he stated that he had made no payments per his plan.²¹ He also stated that his plan remained the same; namely, to pay his delinquent debts from his monthly net remainder.²²

¹⁵ Exhibits 2–6.

¹⁶ Exhibits 4–6.

¹⁷ Exhibit 2 at 7.

¹⁸ Exhibits 2 and A. This matter was not alleged in the SOR; it was considered under the whole-person concept for the limited purposes of assessing the nature, extent, seriousness, and frequency of Applicant's tax problems.

¹⁹ Tr. 42; Exhibit 2.

²⁰ Exhibit 2 at 18.

²¹ Tr. 42–43.

²² Tr. 35–36.

Law and Policies

It is well-established law that no one has a right to a security clearance.²³ 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.”²⁴ 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.²⁵ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁶

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁷ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³⁰ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³¹ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.³²

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

²³ *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).

²⁴ 484 U.S. at 531.

²⁵ Directive, ¶ 3.2.

²⁶ Directive, ¶ 3.2.

²⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁸ Directive, Enclosure 3, ¶ E3.1.14.

²⁹ Directive, Enclosure 3, ¶ E3.1.15.

³⁰ Directive, Enclosure 3, ¶ E3.1.15.

³¹ *Egan*, 484 U.S. at 531.

³² 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.³³ 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,³⁴ 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.³⁵ 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.³⁶

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 debts³⁷ and a history of not meeting financial obligations.³⁸ The facts are more than sufficient to establish these disqualifying conditions. And the same facts support a conclusion of financial irresponsibility.

³³ Executive Order 10865, § 7.

³⁴ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

³⁵ 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).

³⁶ AG ¶ 18.

³⁷ AG ¶ 19(a).

³⁸ AG ¶ 19(c).

There are six mitigating conditions under Guideline F.³⁹ 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. Although he has a reasonable plan to address his delinquent debt, he has taken little action to implement that plan. To his credit, he had a small burst of activity during the April 2013 period as noted in the findings of fact. Nonetheless, the 18 creditors listed in his May 2013 financial payment plan remain entirely unresolved. And he did not use the months since May 2013 to set aside cash for debt payment. This suggests his monthly net remainder of about \$3,000 is not a realistic number. His unimplemented plan amounts to good intentions or a promise to pay, but neither are sufficient to mitigate the security concern.

Of course, a security clearance case is not aimed at collecting debts or enforcing tax laws.⁴⁰ 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.⁴¹

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

³⁹ AG ¶¶ 20(a)–(f).

⁴⁰ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

⁴¹ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

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.⁴² In doing so, I gave substantial weight to Applicant's 20 years of honorable military service, which included a deployment to Afghanistan. Indeed, I have great respect and appreciation for his military service. I also considered the probability that Applicant's divorce had a negative effect on his overall financial situation. 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.c, 1.g, 1.q, 1.r:	For Applicant
Remaining Subparagraphs:	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

⁴² AG ¶ 2(a)(1)–(9).