



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



In the matter of:)
)
-----) ISCR Case No. 12-10921
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

09/01/2016

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for access to classified information. The evidence is sufficient to explain and mitigate Applicant's history of financial problems and difficulties. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on June 18, 2012, for a periodic reinvestigation.¹ About three years later on July 27, 2015, after reviewing the application and information gathered

¹ Exhibit 1 (commonly known as a security clearance application).

during a background investigation, the Department of Defense (DOD)² sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.³ The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations. He answered the SOR on August 20, 2015, and requested a hearing.

The case was assigned to me on February 22, 2016. The hearing was held as scheduled on May 25, 2016. Department Counsel offered Exhibits 1–8, and they were admitted except for Exhibit 4.⁴ Applicant testified on his own behalf and offered Exhibits A–M, and they were admitted. The transcript of the hearing (Tr.) was received on June 3, 2016.

The record was kept open for about 45 days until July 11, 2016, to allow Applicant to submit documentation concerning a state tax lien.⁵ His post-hearing documentation is admitted without objections as Exhibit N.

Findings of Fact

Applicant is a 54-year-old employee who is seeking to retain a security clearance that he has held for many years as a servicemember and contractor. He graduated from a U.S. military academy in 1984.⁶ He then served on active military duty for about 12 years until 1996, when he was honorably discharged.⁷ He worked in the fields of financial management, cost analysis, and acquisitions management. He went on to serve reserve duty during 1999–2010, when he retired at the pay grade of O-4, major.⁸ His educational background includes a master's degree in finance awarded in 1995.⁹

² The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

³ 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).

⁴ Tr. 24–26.

⁵ Tr. 85–90.

⁶ Tr. 30.

⁷ Exhibit K; Tr. 30–33.

⁸ Exhibit J.

⁹ Exhibit L.

Since discharge from active duty in 1996, Applicant has worked as an operations manager for the same company.¹⁰ His annual gross salary is about \$135,000, not including any bonus.¹¹ He will begin receiving military retired pay at age 60.¹² His first marriage ended in divorce in 1992. He married his current wife in 2000. She is employed in the budget department of a public school district, and she earns about \$35,000 annually.¹³

Applicant has a history of financial problems and difficulties dating back to the 2005–2007 period. In his 2012 security clearance application, he disclosed a Chapter 13 bankruptcy case filed in 2005.¹⁴ He stated that the case was concluded by paying off the debt early. He reported no other financial problems or delinquent accounts.

Under Guideline F, the SOR allegations concern three items: (1) the Chapter 13 bankruptcy case, which was filed in July 2005 and dismissed in September 2007; (2) an unpaid \$100,491 judgment filed in July 2006 stemming from a mortgage loan on a rental home; and (3) an unpaid \$7,363 state tax lien filed in March 2013. The first two items are interrelated and discussed together below.

Concerning the bankruptcy case, Applicant explained that he and his wife concluded that they needed relief in addressing their indebtedness.¹⁵ He had been dealing with increasing child-support payments and related expenses from his divorce as well as a tenant who was not paying rent but still living in the rental home. The primary debts at issue in the Chapter 13 bankruptcy case were mortgage loans on Applicant's residential home and a rental home. A review of the Chapter 13 bankruptcy court records shows that both homes were sold during the bankruptcy process, and the sale proceeds were used to pay off the mortgage loans on the properties.¹⁶

The judgment in the SOR stems from the bankruptcy court's February 2, 2006 decision to allow the creditor to foreclose its mortgage on the rental property.¹⁷ The July 2006 judgment for \$100,491 was the result of the foreclosure. The creditor bought the

¹⁰ Tr. 56–57.

¹¹ Exhibit M; Tr. 57–59

¹² Exhibit J.

¹³ Tr. 58.

¹⁴ Exhibit 1.

¹⁵ Tr. 33–36.

¹⁶ Exhibit 5 at 78–118.

¹⁷ Exhibit 5 at 99–101.

rental home at a foreclosure sale in September 2006 conducted by a special master.¹⁸ Thereafter, the creditor sold the rental home to a new owner in January 2007.¹⁹ Although the unpaid 2006 judgment appears on the Government's 2012 credit report,²⁰ it does not appear on the Government's credit reports from 2014 and 2015.²¹ Likewise, the judgment does not appear on Applicant's credit reports from 2013 and 2016.²²

The residential home was sold in about May 2007.²³ Once both homes were sold, Applicant, through counsel, moved the court to dismiss the Chapter 13 bankruptcy case, because Applicant and his wife no longer wished to be debtors in bankruptcy.²⁴ The bankruptcy court dismissed the case in September 2007.²⁵ In addition to paying off the mortgage loans with the sales proceeds, the bankruptcy court records show Applicant paid \$50,718 into the confirmed Chapter 13 plan of which \$39,286 was used to pay off indebtedness.²⁶

Concerning the state tax lien for \$7,363, it was not reported in Applicant's 2012 security clearance application or discussed in his 2012 background investigation because it occurred after those events.²⁷ It is established by multiple credit reports.²⁸ In addition, Applicant's credit reports from 2013 and 2015 establish a second unpaid state tax lien for \$715, also filed in March 2013, and not alleged in the SOR.²⁹ In his answer to the SOR, he stated that he did not realize there was a state tax lien against him; he included a copy of an August 2015 letter of inquiry to the state tax department and a copy of his state income tax return for 2013; and he pledged to work to clear the matter

¹⁸ Exhibit B.

¹⁹ Exhibit C.

²⁰ Exhibit 6.

²¹ Exhibits 7 and 8.

²² Exhibits G and H.

²³ Exhibit 5 at 115–117.

²⁴ Exhibit 5 at 119–120.

²⁵ Exhibit 5 at 121–122.

²⁶ Exhibit 5 at 123.

²⁷ Exhibits 1 and 2.

²⁸ Exhibits 7, 8, G, and H

²⁹ Exhibits G and H.

up.³⁰ He sent another letter of inquiry in December 2015.³¹ At the hearing, he expressed frustration with his inability to communicate with someone at the state tax department, and he was uncertain of the basis for the tax lien.³² Post-hearing, he presented documentation from the state tax department showing that both tax liens were released.³³

Although Applicant has a formal education and background in finance, it was apparent that he had a layman's understanding of his bankruptcy case. He expressed frustration with a lack of communication and information from his bankruptcy attorney.³⁴ He described the bankruptcy case as a "black hole process."³⁵ He confused or conflated the discharge of the bankruptcy trustee at the conclusion of the case with him and his wife receiving a discharge, when in fact they had the case dismissed.³⁶

Applicant is no longer financially overextended, and his overall financial situation appears to be stable. The most recent credit report from March 2016 lists the two state tax liens discussed above, which are now resolved. Otherwise, the report contains no derogatory accounts (e.g., past-due accounts, collection accounts, or charged-off accounts).³⁷ He and his wife have lived in a rental home since early 2007. He estimated their total monthly living expenses at about \$4,000, which is relatively low compared with household income.³⁸ He has an employer-sponsored pension plan valued at about \$525,131 as of November 2015.³⁹ He estimated having about \$1 million in total investment accounts.⁴⁰

³⁰ Answer to SOR, including Enclosure 2.

³¹ Exhibit D.

³² Tr. 47–48.

³³ Exhibit N.

³⁴ Tr. 35–36, 39.

³⁵ Tr. 71–72.

³⁶ Tr. 37–39; Exhibit A at 3.

³⁷ Exhibit H.

³⁸ Exhibit F.

³⁹ Exhibit I.

⁴⁰ Tr. 46.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁴¹ 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.”⁴² 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.⁴³ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁴⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁴⁵ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁴⁶ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁴⁷ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁴⁸

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁴⁹ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.⁵⁰

⁴¹ *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).

⁴² 484 U.S. at 531.

⁴³ Directive, ¶ 3.2.

⁴⁴ Directive, ¶ 3.2.

⁴⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁴⁶ Directive, Enclosure 3, ¶ E3.1.14.

⁴⁷ Directive, Enclosure 3, ¶ E3.1.15.

⁴⁸ Directive, Enclosure 3, ¶ E3.1.15.

⁴⁹ *Egan*, 484 U.S. at 531.

⁵⁰ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.⁵¹ 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,⁵² 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.⁵³ 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.⁵⁴

The concern is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The evidence—Applicant's 2005–2007 Chapter 13 bankruptcy case, the indebtedness therein, and the 2013 state tax liens—supports a conclusion that Applicant has demonstrated an inability to satisfy debts within the meaning of AG ¶ 19(a). The same facts support a conclusion of a history of not meeting financial

⁵¹ Executive Order 10865, § 7.

⁵² AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

⁵³ 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).

⁵⁴ AG ¶ 18.

obligations within the meaning of AG ¶ 19(c). Those matters require closer examination. Indeed, failure to pay taxes on a timely basis suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information.

I considered the six mitigating conditions under Guideline F,⁵⁵ and the following are most pertinent in analyzing Applicant's case:

AG ¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not case doubt on the [person's] current reliability, trustworthiness, or good judgment; and

AG ¶ 20(c) [t]here are clear indications that the problem is being resolved or is under control.

The former mitigating condition applies to the facts and circumstances surrounding Applicant's 2005–2007 Chapter 13 bankruptcy case, including the judgment from foreclosure on the rental home. The bankruptcy case was largely the result of Applicant becoming financially overextended for the reasons discussed above. The mortgage loans were paid off when the homes were sold during the bankruptcy process, he paid in more than \$50,000 into the bankruptcy case, and the case was dismissed in September 2007, which is now nine years ago. Moreover, Applicant is a renter without the burden of a mortgage loan, which suggests that similar behavior is unlikely to recur.

The latter mitigating condition applies to all three items in the SOR. As noted above, the bankruptcy case and related judgment are now safely in the past, nine years removed. And Applicant has now resolved the state tax liens. Taken together, the facts and circumstances show that his financial problems during 2005–2007 are becoming a historical footnote in his life. But the same cannot be said for 2013 state tax liens. He should have been more proactive in resolving the liens. Nevertheless, the liens are now resolved as shown by the post-hearing documentation. It is also noted that the amount of money at issue was not large. Moreover, it is evident that Applicant's financial condition has improved since the Chapter 13 bankruptcy case, he has accumulated substantial financial assets, and his overall financial situation is stable.

In addition to considering the formal mitigating circumstances, I gave favorable consideration to Applicant's 20-plus years of honorable military service; his long record of holding a security clearance; his long record of employment with the same company; and his voluntarily reporting of the Chapter 13 bankruptcy case in his security clearance application. Taken together, these circumstances are a good indication of stability, reliability, and trustworthiness.

⁵⁵ AG ¶ 20(a)–(f).

Applicant's history of financial problems and difficulties does not create doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. 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.⁵⁶ Accordingly, I conclude that he 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
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Subparagraphs 1.a–1.c:	For Applicant
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Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard
Administrative Judge

⁵⁶ AG ¶ 2(a)(1)–(9).