



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



In the matter of:)
)
-----) ISCR Case No. 15-01006
)
Applicant for Security Clearance)

Appearances

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

08/16/2016

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny him eligibility for access to classified information. The evidence is sufficient to explain and mitigate Applicant's financial problems or 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 July 21, 2014.¹ Thereafter, on November 30, 2015, after reviewing the application and information gathered during a background investigation,

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

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 January 4, 2016, and requested a hearing.

The case was assigned to me on March 2, 2016. The hearing was held as scheduled on April 12, 2016. Department Counsel offered Exhibits 1–6, and they were admitted. Applicant testified on his own behalf and offered Exhibits A–J, and they were admitted. The transcript of the hearing (Tr.) was received on April 21, 2016.

The record was kept open for 30 days until May 12, 2016, to allow Applicant to submit additional information concerning his child-support obligation. He made two timely submissions, and those five documentary matters are admitted without objections as Exhibits K–O.

Findings of Fact

Applicant is a 30-year-old employee who is seeking to retain a security clearance. His background includes honorable service (active reserve) in the U.S. Marine Corps during 2004–2011. He made two deployments to Iraq during that period. Thereafter, he attended a technical college from January 2011 to January 2013, and he was awarded an associate's degree in information systems and security. He attended another school during July–August 2013, and he was awarded a commercial driver's license (CDL) certificate. He is currently employed as an electronics technician for a company doing business in the defense industry. He has worked for this company from March 2014 to present, although he had two short periods of employment with the same company in 2013.⁴

Applicant has never married, and he currently lives with the mother of his son, who was born in 2012. He also has a daughter, born in 2005, and the child lives with her mother in a city a substantial distance (10 to 11 hours by car) from Applicant. He has a child-support obligation to his daughter, he has been delinquent in the past, and he disclosed a judgment for past-due child support in his 2014 security clearance

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 Exhibit 1.

application. In addition to the child-support matter, the SOR alleges three collection or charged-off accounts for a total of \$3,433. These four matters are discussed below.

SOR ¶ 1.a—\$1,664 collection account. This debt stems from Applicant's attendance at the school in 2013 to obtain the CDL certificate.⁵ He has not made any payments on this account. It is unresolved according to Applicant's April 2016 credit report.⁶

SOR ¶ 1.b—\$1,657 charged-off account. This debt stems from a credit card account that went into default.⁷ He has not made any payments on this account. It is unresolved according to Applicant's April 2016 credit report.⁸

In December 2015, Applicant entered into an agreement with a credit-repair firm to address his indebtedness with the intention of paying off the two debts mentioned above.⁹ The plan calls for him to make \$195.50 monthly payments for 12 months to the firm in exchange for debt-management counseling services in negotiating a repayment plan with individual creditors. He had not made any payments on the plan as of April 2016.¹⁰

SOR ¶ 1.c—\$112 collection account. This debt stems from an apartment lease, and Applicant paid it in December 2015.¹¹

SOR ¶ 1.d—\$11,906 judgment for a child-support enforcement agency in 2010. As mentioned above, Applicant has an ongoing child-support obligation for his daughter born in 2005. The child-support order began in 2007. He is currently ordered to pay a total of \$473 monthly as follows: \$265 for ongoing child support; \$135 for the child-support judgment or arrears; and \$73 for medical support payment.¹²

Two judgments for child-support arrears were obtained against Applicant. The first judgment, as alleged in the SOR, was obtained in July 2010 for \$11,906.¹³

⁵ Tr. 70–73; Exhibit C.

⁶ Exhibit O at 6.

⁷ Tr. 73–76; Exhibit D.

⁸ Exhibit O at 8.

⁹ Exhibits A and B.

¹⁰ Tr. 73.

¹¹ Exhibit E.

¹² Exhibits G and L.

¹³ Exhibits 3, 4, 5, and 6.

Apparently, the judgment was obtained after an arrearage had accumulated. It appears that judgment has been resolved and any balance due was included in the second judgment.¹⁴ The judgment was recently deleted from Applicant's credit history according to his April 2016 credit report.¹⁵

The second judgment, which is not alleged in the SOR, was obtained in June 2013 for \$14,060 for child-support arrears.¹⁶ The judgment was entered during the course of a case to modify child support and custody between Applicant and the child's mother. The court ordered Applicant to pay \$265 per month for child support beginning in June 2013.¹⁷ The court also found Applicant was in arrears for \$14,060, which included all unpaid child support and any balance owed on previously confirmed arrears or retroactive support judgment.¹⁸ The court ordered Applicant to pay \$135 per month for the arrears beginning in June 2013.

The official payment record shows that Applicant paid a total of \$17,971 for child support from January 2007 to April 2013.¹⁹ He then paid a total of \$24,495 for child support from May 2013 to April 2016.²⁰ The payment record includes a lump-sum payment of about \$3,014 in March 2016 stemming from a \$3,000 bond payment Applicant made in June 2015 when he failed to appear for a mandatory court appearance.²¹ The bond payment was subsequently applied to the child support.

Applicant reduced the child-support arrears from \$14,060 in April 2013 to \$3,498 as of April 2016.²² He has made the full monthly child-support payment (\$475) since February 2014, which is about the same time he began his current employment.²³ In total, the official payment record shows Applicant paid about \$42,466 for child support from January 2007 to April 2016.²⁴ At \$135 per month (plus interest), he should repay arrears of \$3,498 in about 26 months or so.

¹⁴ Exhibit F.

¹⁵ Exhibit O at 2.

¹⁶ Exhibit M at 20.

¹⁷ Exhibit M at 17.

¹⁸ Exhibit M at 20.

¹⁹ Exhibit K at 2–4.

²⁰ Exhibit K at 5–6.

²¹ Exhibit K at 5 and Exhibit N.

²² Exhibits G and H.

²³ Exhibit K at 5.

²⁴ Exhibit K.

Law and Policies

It is well-established law that no one has a right to a security clearance.²⁵ 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.”²⁶ 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.²⁷ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁸

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³⁰ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³¹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³²

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³³ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.³⁴

²⁵ *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).

²⁶ 484 U.S. at 531.

²⁷ Directive, ¶ 3.2.

²⁸ Directive, ¶ 3.2.

²⁹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³⁰ Directive, Enclosure 3, ¶ E3.1.14.

³¹ Directive, Enclosure 3, ¶ E3.1.15.

³² Directive, Enclosure 3, ¶ E3.1.15.

³³ *Egan*, 484 U.S. at 531.

³⁴ 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.³⁵ 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,³⁶ 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.³⁷ 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.³⁸

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 supports a conclusion that Applicant has a history of financial problems or difficulties as well as inability or unwillingness to satisfy debts.³⁹ That

³⁵ Executive Order 10865, § 7.

³⁶ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

³⁷ 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).

³⁸ AG ¶ 18.

³⁹ AG ¶¶ 19(a) and (c).

conclusion is supported by the documentary evidence that establishes the child-support arrears and the three other delinquent debts.

I considered the six mitigating conditions under Guideline F,⁴⁰ and the following are most pertinent:

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

AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant did not present a perfect case, but the evidence is sufficient to explain and mitigate the concern stemming from his financial problems, which consists primarily of child-support arrears. The evidence shows that he is making a concerted effort to meet his child-support obligation and support his own family concurrently, which can be a difficult task. The best evidence on this point is the following: (1) he paid \$24,495 in child-support payments during the last three years; (2) he reduced an arrearage of more than \$14,000 to less than \$3,500 in the same period; and (3) he paid the total amount of about \$42,466 in child-support payments from January 2007 to April 2016. His payment record is sufficient to establish a meaningful track record of actual debt reduction. It also shows that it is likely that he will continue making the child-support payments. In addition, he paid off the minor \$112 collection account. Those are not the actions of a financially irresponsible person. And, unlike many applicants in Guideline F cases, he did a good job of providing documentation in support of his case.

Applicant's case is less than perfect because two delinquent debts remain wholly unresolved. But he did obtain the services of a credit-repair firm to assist him. The two debts are for less than \$3,500, which is not a large amount of money. He should be able to pay off or settle those accounts in the foreseeable future.

Applicant's history of financial problems or 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.⁴¹ In that regard, I gave special consideration to his honorable military service, which included two deployments to Iraq. 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.

⁴⁰ AG ¶ 20(a)–(f).

⁴¹ AG ¶ 2(a)(1)–(9).

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.d:	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