



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



In the matter of:)
)
-----) ISCR Case No. 15-01368
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

01/03/2017

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke his eligibility for access to classified information. He did not present sufficient documentary evidence to rebut, explain, extenuate, or mitigate the concern raised by his history of financial problems or difficulties. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on November 20, 2012.¹ About three years later on September 13, 2015, after reviewing the application and information gathered during a background investigation, the Department of Defense (DOD)² sent Applicant a

¹ Exhibit 3 (this document is commonly known as a security clearance application).

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.

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 reasons for the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR with a two-page memorandum as well as a one-page memorandum, which explained his untimely answer, on January 7, 2016.

Neither Applicant nor Department Counsel requested a hearing, and so the case will be decided on the written record.⁴ On March 9, 2016, Department Counsel submitted all relevant and material information that could be adduced at a hearing.⁵ The file of relevant material (FORM) was mailed to Applicant, who received it on March 18, 2016. He has not replied to FORM. The case was assigned to me several months later on December 7, 2016.

Findings of Fact

Applicant is a 36-year-old employee who requires a security clearance for his job working as a test engineer for a federal contractor. He has been so employed since September 2011. He reported three periods of unemployment during the last ten years as follows: (1) July 2011–September 2011; (2) October 2010–May 2011; and (3) February 2008–May 2008. He previously worked for a federal contractor as a test technician during 2008–2010. He married in 1999, divorced in 2003, and currently lives with a cohabitant. He has attended some college within the last ten years, but has not earned a degree or certificate.

Under Guideline F, the SOR alleged a history of financial problems or difficulties consisting of the following: (1) failure to timely file individual federal and state income tax returns for tax years 2010 and 2011; (2) eight collection accounts for a total of about \$1,423; and (3) two unpaid judgments for a total of about \$12,130. These matters are established by Applicant's admissions and credit reports from 2012 and 2015.⁶ They are discussed below in sequence.

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). The AG replace the guidelines in Enclosure 2 to the Directive.

⁴ Directive, Enclosure 3, ¶ E3.1.7.

⁵ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which are identified as evidentiary exhibits in this decision.

⁶ Exhibits 5 and 6.

First, concerning the tax issue, Applicant admitted failure to timely file federal and state income tax returns for 2010 and 2011. He also stated in his January 2016 answer to the SOR that the returns were now filed, but he did not present documentation to establish that the returns were indeed filed with federal and state tax authorities. Likewise, he did not submit such documentation in reply to the FORM.

Second, concerning the eight collection accounts, he disputes some of the accounts and claims others were paid. He did not present documentation to establish that any of the collection accounts were paid, settled, in repayment, in dispute, cancelled, forgiven, or otherwise resolved.

Third, concerning the two unpaid judgments, a December 2012 credit report shows that the \$11,590 judgment was filed in February 2012 and the \$540 judgment was filed in October 2007.⁷ Neither judgment appears in a more recent January 2015 credit report.⁸ In his January 2016 answer to the SOR, Applicant claimed that both judgments were paid. He has not presented documentation to show that the judgments were paid, satisfied, or released by the respective plaintiff.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁹ 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.”¹⁰ 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.¹¹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹²

⁷ Exhibit 6.

⁸ Exhibit 5.

⁹ *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).

¹⁰ 484 U.S. at 531.

¹¹ Directive, ¶ 3.2.

¹² Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹³ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁴ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁵ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁶ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁷ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁸

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.¹⁹ 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,²⁰ 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.²¹ The overall concern is:

¹³ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁴ Directive, Enclosure 3, ¶ E3.1.14.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ *Egan*, 484 U.S. at 531.

¹⁸ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁹ Executive Order 10865, § 7.

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

²¹ 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).

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.²²

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.

In analyzing this case, I considered the following disqualifying and mitigating conditions under Guideline F:²³

AG ¶ 19(a) inability or unwillingness to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

AG ¶ 19(g) failure to file annual federal, state, or local income tax returns as required or the fraudulent filing of the same; and

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the [person] acted responsibly under the circumstances.

The evidence here supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. The written record shows that Applicant failed to timely file federal and state income tax returns for two tax years, has a number of relatively small collection accounts that have gone unresolved, and has two judgments he claims he has paid, but has not provided proof of payment.

In mitigation, it is probable that Applicant's periods of unemployment caused him financial distress over the last ten years. But he has had a full-time job since September 2011, a period of about five years, which should have been enough time for him to put his financial house in good order and have supporting documentation to show he has in fact done so. Documentation is necessary because the DOD security-clearance process, like other large bureaucratic institutions (e.g., banks, insurance companies,

omitted).

²² AG ¶ 18.

²³ AG ¶ 20(a)–(f).

universities), does not run on word-of-mouth; it runs on documentation. The nature of the beast is that it is up to the individual applicant to submit relevant documentation in support of his case. Here, Applicant has not submitted a single page of supporting documentation. Given these circumstances, I can only conclude that the unfiled tax returns remain outstanding, the collection accounts remain unresolved, and the two judgments remain unpaid. In other words, Applicant's financial problems are unresolved and ongoing.

Applicant's history of financial problems creates 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.²⁴ Accordingly, I conclude that he has not 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:

Paragraph 1, Guideline F:	Against Applicant
---------------------------	-------------------

Subparagraphs 1.a–1.k:	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 access to classified information.

Michael H. Leonard
Administrative Judge

²⁴ AG ¶ 2(a)(1)–(9).