



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



In the matter of:)
)
-----) ISCR Case No. 15-01767
)
Applicant for Security Clearance)

Appearances

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

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 1, 2014.¹ Thereafter, on November 20, 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 December 24, 2015, 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 1–4, and they were admitted. Applicant presented one witness, testified on his own behalf, and offered Exhibits A–P, and they were admitted. The transcript of the hearing (Tr.) was received on April 22, 2016.

Findings of Fact

Applicant is a 52-year-old employee who is seeking to retain a security clearance that he has held without an adverse incident since 1987 or 1988 while working for various companies in the defense industry.⁴ His education includes a bachelor's degree in electrical engineering. He is currently employed as an engineer, and his work involves testing and evaluating communication and weapons' systems. He has worked for his current employer since June 2015, with a salary of \$82,000 annually.⁵ His annual salary is now \$110,000.⁶

Applicant married in 1982, separated near the end of 2004, and divorced in 2005. Applicant and his former spouse have three adult children. He and his former spouse reconciled and have been living together since December 2011. He has a history of financial problems or difficulties that he attributes to a difficult and costly divorce, court-ordered support payments, and providing financial support to his children and former

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 Exhibits 1 and 2.

⁵ Exhibit M.

⁶ Exhibit N.

spouse above the court-ordered requirements.⁷ He also used credit cards to fund a business during 2004–2008, when it failed.

Under Guideline F, the SOR alleges ten collection or charged-off accounts for a total of about \$58,000, although several of the charged-off accounts have no dollar amounts alleged. Applicant disclosed several delinquent accounts in his 2014 security clearance application.⁸ He provided additional details about his financial record and delinquent accounts during his 2014 background investigation.⁹ The SOR allegations are established by Department Counsel's documentary evidence as well as Applicant's admissions in his answer to the SOR and his hearing testimony.

The evidence establishes that two student loan accounts were rehabilitated and are in good standing; five accounts were paid or settled; one account is in repayment with a large balance; and two accounts have unknown creditors. The ten accounts are discussed further below.

SOR ¶ 1.a–charged-off account. This debt stems from a student loan for \$10,000 Applicant obtained for one of his sons in 2005.¹⁰ Applicant successfully rehabilitated the loan, the creditor removed the record of default from the loan in 2013, and the loan is current and up to date.¹¹ He estimated the current balance at about \$1,800.¹²

SOR ¶ 1.b–\$26,116 charged-off account. This debt stems from an unsecured line of credit Applicant obtained in about 2007 or 2008 for business and family expenses.¹³ He had multiple conversations with the creditor and they indicated they were not interested in establishing a formal repayment arrangement because the debt was charged off. Nonetheless, he has made monthly payments in varying amounts (\$200, \$150, or \$100) since December 2015. He estimated the current balance at about \$25,580.¹⁴ The goal is to reduce the balance owed to about \$10,000 and then ask the creditor to cancel or forgive the balance due.

⁷ Answer to SOR; Exhibit 2.

⁸ Exhibit 1.

⁹ Exhibit 2.

¹⁰ Tr. 61–63.

¹¹ Answer to SOR.

¹² Tr. 63.

¹³ Tr. 63–68.

¹⁴ Tr. 64.

SOR ¶ 1.c–\$10,000 charged-off account. This debt stems from a credit card account Applicant used for business and family expenses.¹⁵ He settled the account for the lesser amount of \$2,903 in February–March 2016.¹⁶

SOR ¶ 1.d and ¶ 1.e–two charged-off accounts with the same original creditor. Despite multiple telephone calls to the original and subsequent creditors, Applicant has not succeeded in finding a creditor who owns the accounts.¹⁷

SOR ¶ 1.f–\$515 collection account. This debt stems from a department store charge card account.¹⁸ Applicant paid it in full in September 2014.¹⁹

SOR ¶ 1.g–\$5,494 collection account. This debt stems from a credit card account that was turned over to a collection agency. The account was satisfied in full in December 2015.²⁰

SOR ¶ 1.h–\$2,363 charged-off account. This debt stems from a credit card account opened in about early 2007. The debt was subsequently reduced to a civil judgment for \$2,446 in June 2010. Applicant paid \$2,800 to satisfy the judgment in March 2015.²¹

SOR ¶ 1.i–\$13,540 collection account. This debt stems from a student loan Applicant cosigned for a son.²² Applicant was unaware that the loan was delinquent until his 2014 background investigation. The loan became delinquent when his son was laid off from a job. His son has resumed making payments on the loan, and the loan is current and up to date.

¹⁵ Tr. 68–70.

¹⁶ Exhibits H and I.

¹⁷ Answer to SOR; Tr. 70.

¹⁸ Answer to SOR.

¹⁹ Exhibit 4.

²⁰ Exhibit J.

²¹ Answer to SOR.

²² Answer to SOR; Tr. 74–75.

SOR ¶ 1.j–charged-off account. This debt stems from a credit card account that had a \$2,500 credit limit and a high balance of \$8,730.²³ The account is now paid and closed with \$431 written off, and has a \$0 balance.²⁴

Applicant has a good employment record and the full support of his senior project manager.²⁵ He also has the full support of his former spouse and three adult children, all of whom submitted letters on his behalf. Taken together, the letters described Applicant as a dedicated family man, before and after the divorce, whose financial contributions to his former spouse and children went well beyond what was required by the court order.²⁶ The financial support extended to paying for expensive extracurricular activities for two of the children. Most recent, his financial support extended to his youngest child, a daughter, to help her obtain a nursing degree, which was recently completed.²⁷ He estimated having \$10,000 to \$11,000 in his checking account, and he is contributing to a 401(k) account.²⁸ His financial situation is continuing to improve as reflected by his credit score increasing 91 points from April 2015 to March 2016.²⁹

Law and Policies

It is well-established law that no one has a right to a security clearance.³⁰ 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.”³¹ 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.³² An

²³ Answer to SOR; Exhibit 2.

²⁴ Exhibit 4.

²⁵ Exhibits E and K.

²⁶ Exhibits B, C, and D.

²⁷ Exhibits F and G.

²⁸ Tr. 84–85.

²⁹ Exhibit P.

³⁰ *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).

³¹ 484 U.S. at 531.

³² Directive, ¶ 3.2.

unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.³³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.³⁴ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³⁷

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³⁸ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.³⁹

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.⁴⁰ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

³³ Directive, ¶ 3.2.

³⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³⁵ Directive, Enclosure 3, ¶ E3.1.14.

³⁶ Directive, Enclosure 3, ¶ E3.1.15.

³⁷ Directive, Enclosure 3, ¶ E3.1.15.

³⁸ *Egan*, 484 U.S. at 531.

³⁹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁴⁰ Executive Order 10865, § 7.

Discussion

Under Guideline F for financial considerations,⁴¹ 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.⁴² 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.⁴³

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.⁴⁴ I considered the six mitigating conditions under Guideline F,⁴⁵ and the following are most pertinent:

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;

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.

⁴¹ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

⁴² 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).

⁴³ AG ¶ 18.

⁴⁴ AG ¶¶ 19(a) and (c).

⁴⁵ AG ¶ 20(a)–(f).

Applicant did not present a perfect case, but the evidence is sufficient to explain and mitigate the concern stemming from his financial problems or difficulties. First, it is evident that Applicant's history of financial problems or difficulties were brought about by conditions largely beyond his control; namely, the separation and divorce in 2004–2005, the court-ordered financial support obligations for his spouse and children, and the business failure in 2008. Second, the evidence shows that he made a reasonable effort to resolve his delinquent debts. For the ten accounts in the SOR, the evidence establishes that two student loan accounts were rehabilitated and are in good standing; five accounts were paid or settled; one account is in repayment with a large balance; and two accounts have unknown creditors. Those are not the actions of a financially irresponsible person.

Granted, Applicant should have acted sooner to address these matters. But the timing of his remedial actions does not cancel out or wholly negate his efforts to rehabilitate his financial record. In any event, 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 working to resolve the charged-off account with the large balance in SOR ¶ 1.b.

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.⁴⁶ In that regard, I gave favorable consideration to his good employment record; his long record of holding a security clearance without an adverse incident; his difficult marital circumstances resulting in a separation in 2004, a divorce in 2005, and then a reconciliation in 2011; and his strong commitment to provide financial support for his wife and children beyond what was required by the court order, although that hindered his ability to address his lawful debts. 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 |
| Subparagraphs 1.a–1.j: | For Applicant |

⁴⁶ AG ¶ 2(a)(1)–(9).

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