



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



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)

ISCR Case No. 15-02476

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel

For Applicant: *Pro se*

02/14/2017

**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 evidence to explain, extenuate, and mitigate the security concern stemming from his problematic financial history. 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 December 13, 2012. This document is commonly known as a security clearance application. About three years later on November 2, 2015, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, 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.<sup>1</sup> The SOR is similar to a complaint. It

---

<sup>1</sup> This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG),

detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations. He answered the SOR with a two-page memorandum on January 22, 2016. He admitted the seven factual allegations without explanation and did not submit supporting documentation. He also requested a decision based on the written record without a hearing.

On March 28, 2016, Department Counsel submitted all relevant and material information that could be adduced at a hearing.<sup>2</sup> The file of relevant material (FORM) was mailed to Applicant, who received it on April 5, 2016. He has not replied to the FORM. The case was assigned to me several months later on February 6, 2017.

### **Procedural Matters**

Department Counsel's FORM includes Exhibit 3, which is a report of investigation (ROI) summarizing Applicant's interview that took place during the February 2013 background investigation. The ROI is not authenticated as required under ¶ E3.1.20 of the Directive.<sup>3</sup> Department Counsel's written brief includes a footnote advising Applicant that the summary was not authenticated and that failure to object may constitute a waiver of the authentication requirement. Nevertheless, I am not persuaded that a *pro se* applicant's failure to respond to the FORM, which is optional, equates to a knowing and voluntary waiver of the authentication requirement. The record does not demonstrate that Applicant understood the concepts of authentication, waiver, and admissibility. It also does not demonstrate that he understood the implications of waiving an objection to the admissibility of the ROI. Accordingly, Exhibit 3 is inadmissible and I have not considered the information in the ROI.

### **Findings of Fact**

Applicant is a 48-year-old employee who requires a security clearance for his job as a dispatcher for a trucking company. He has worked for this company since 2012. This appears to be the first time he has applied for a security clearance. Other than a three-month period in 2012, he has had full-time employment since 1990. He married in 1990 and divorced in 2002. He has two children, both of whom are young adults.

In his December 2012 security clearance application, Applicant disclosed a history of financial problems consisting of seven delinquent accounts.<sup>4</sup> He explained

---

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).

<sup>2</sup> The file of relevant material consists of Department Counsel's written brief and supporting documentation, some of which are identified as evidentiary exhibits in this decision.

<sup>3</sup> See generally ISCR Case No. 12-10933 (App. Bd. Jun. 29, 2016) (In a concurring opinion, Judge Ra'anani notes the historical concern about reports of investigation in that they were considered by some to present a heightened problem in providing due process in security clearance cases. Judge Ra'anani raises a number of pertinent questions about using an unauthenticated ROI in a non-hearing case with a *pro se* applicant.).

<sup>4</sup> Exhibit 2.

that one of the accounts had been paid off and that he was planning on filing bankruptcy for the other six accounts.

Under Guideline F for financial considerations, the SOR alleged a history of financial problems or difficulties consisting of seven accounts for almost \$48,000 in delinquent debt. Three debts are for unpaid judgments for about \$30,000 in total. Two debts are for medical collection accounts in the amounts of \$685 and \$250. Applicant does not dispute his problematic financial history, and it is also established by credit reports.<sup>5</sup> Applicant did not present any supporting documentation, either in answer to the SOR or in response to the FORM, to establish that the delinquent accounts in the SOR are paid, settled, in a repayment arrangement, cancelled, forgiven, or otherwise resolved in his favor.

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>6</sup> As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>7</sup> 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.<sup>8</sup> An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>9</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>10</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>11</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

---

<sup>5</sup> Answer to SOR; Exhibits 4 and 5.

<sup>6</sup> *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 (no right to a security clearance).

<sup>7</sup> 484 U.S. at 531.

<sup>8</sup> Directive, ¶ 3.2.

<sup>9</sup> Directive, ¶ 3.2.

<sup>10</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>11</sup> Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.<sup>12</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>13</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>14</sup> The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>15</sup>

## Discussion

Under Guideline F for financial considerations,<sup>16</sup> 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. 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 a [person's] reliability, trustworthiness, and ability to protect classified information.<sup>17</sup>

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 the facts of this case, I considered the following disqualifying and mitigating conditions or factors:

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

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

AG ¶ 20(b) the conditions that resulted in the financial problems 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;

---

<sup>12</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>13</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>14</sup> *Egan*, 484 U.S. at 531.

<sup>15</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>16</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>17</sup> AG ¶ 18.

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.

The evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. It appears that his financial problems are based on an overreliance on credit. With that said, I have given very little weight to the two medical collection accounts for \$685 and \$250 because the amounts are minor. Further, it is presumed that the debts were incurred for necessary medical care and treatment as opposed to frivolous or irresponsible spending.

Based on the written record before me, I am unable to credit Applicant in extenuation or mitigation. Other than a three-month period in 2012, shortly before he began his current job, he has had full-time employment since 1990. He has had ample time since submitting his security clearance application in December 2012 to begin the process of putting 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, and universities) does not run on word-of-mouth; it runs on paperwork. 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 three unpaid judgments and two delinquent consumer accounts are unresolved and ongoing.

Applicant's history of financial problems creates doubt about his 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*. Accordingly, I conclude that he did not meet 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant

Subparagraph 1.g:

Against Applicant

**Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant access to classified information.

Michael H. Leonard  
Administrative Judge