



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



In the matter of:)
)
-----) ISCR Case No. 15-02477
)
Applicant for Security Clearance)

Appearances

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

08/23/2016

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 not sufficient to explain and mitigate Applicant's 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 October 29, 2012, for a periodic reinvestigation.¹ About three years later on October 2, 2015, after reviewing the application and information

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

gathered 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 November 6, 2015, and requested a hearing.

The case was assigned to me on February 22, 2016. The hearing was held as scheduled on May 24, 2016. Department Counsel offered Exhibits 1–5, and they were admitted. Applicant testified on his own behalf and offered Exhibit A, and it was admitted. The transcript of the hearing (Tr.) was received on June 2, 2016.

The record was kept open until June 30, 2016, to allow Applicant to submit additional documentation.⁴ He made a timely submission on June 29th consisting of his IRS account transcripts for tax years 2009 through 2015, and they are admitted without objections as Exhibits B–H. He made an untimely submission on August 5th of his DD Form 214, and it is admitted without objections as Exhibit I.

Findings of Fact

Applicant is a 57-year-old employee who is seeking to retain a security clearance that he has held for many years. His background includes 20 years of honorable military service, which concluded in 2001 when he retired.⁵ His primary speciality was working as an avionics technician. He has since been employed as an electronics technician for a defense contractor in support of the military. He has worked for his current employer since August 2009. He has a good employment record as shown by a strong letter of recommendation from his site manager, who describes Applicant as “an outstanding electronic and computer repair technician” who is “proven to be honest, dependable, and responsible.”⁶ He has been married since 1990, and he has two adult children. His spouse is employed by a state agency.

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. 69–77.

⁵ Exhibit I.

⁶ Exhibit A.

Applicant has a history of financial problems or difficulties, which he does not dispute. He disclosed an adverse financial record in his 2012 security clearance application.⁷ He stated that he had severe credit-card problems, things snowballed and he fell into deeper debt, but he had been working for the past two-plus years to remedy the problems. He reported that he had failed to pay about \$2,000 in total in federal income taxes for tax years 2009 and 2010. He further reported four delinquent credit card accounts for a total of about \$17,550. He provided additional details about his financial record (concerning three listed and three unlisted delinquent debts) during his December 2012 background investigation.⁸

Under Guideline F, the SOR allegations fall into three groups: (1) Applicant failed to file a federal income tax return, as required, for tax years 2009 and 2010; (2) an unpaid \$7,909 charged-off account stemming from a credit card account; and (3) two unpaid medical collection accounts for \$119 and \$25.⁹ The SOR allegations are established by Department Counsel's documentary evidence, Applicant's documentary evidence, and Applicant's admissions in his answer to the SOR and his hearing testimony.

At the hearing, Applicant conceded he was not completely certain what led to his tax problems for tax years 2009 and 2010.¹⁰ He believes the tax problems stem from his change of employers in 2009; his former employer gave him a check for the proceeds (about \$18,000) of his 401(k) account; he misplaced the check at his home; and he failed to timely rollover the proceeds into another qualified account.¹¹ He discovered this circumstance during the 2009 tax season (in 2010), he found the check in a roll-top desk, and deposited it in a regular bank account. He admits that he should have obtained professional tax assistance to address the issue, but he continued to handle his federal income tax returns.¹²

Applicant's 2009–2015 IRS account transcripts, which he obtained after the hearing, show the following:¹³

⁷ Exhibit 1.

⁸ Exhibit 2.

⁹ Although the medical collection accounts remain unpaid, they are decided for Applicant for the following reasons: (1) they are for minor if not trivial amounts; (2) medical debts are presumed to be incurred for necessary medical care and treatment as opposed to frivolous or irresponsible spending; and (3) he has no idea of the basis of the debts. Accordingly, they are not discussed further herein.

¹⁰ Tr. 75 ("I'm not sure either, really, to be blunt about it.").

¹¹ Tr. 38–40.

¹² Tr. 42.

- For tax year 2009, no tax return was filed, and the account balance is \$0.¹⁴ The filing status of single with no exemptions is indicative of no return filed. In April 2012, a \$3,640 credit was transferred from his 2011 tax return.¹⁵
- For tax year 2010, a substitute tax return was prepared by the IRS on February 11, 2013, and the account balance is \$0.11.¹⁶ The filing status of single with one exemption is indicative of no return filed. In April 2013, a \$998 credit was transferred from his 2012 tax return.¹⁷ A tax return was secured on August 21, 2013. Thereafter, in September 2013, Applicant was assessed a \$1,226 penalty for filing the tax return after the due date; he was charged \$532 interest for late payment; and he was assessed a \$790 penalty for late payment of tax. In April 2014, a \$6,800 credit was transferred from his 2013 tax return.¹⁸ Collection notices were issued in May and June 2014; a payment of \$1,640 was made in October 2014; and he was charged \$165 for interest and assessed a \$272 penalty for late payment of tax in November 2014.¹⁹
- For tax years 2011–2015, Applicant timely filed his returns by the April 15th deadline or within an extension of time, and the account balances are \$0.²⁰ The filing status is married filing jointly with four or three exemptions. He received sizable refunds (e.g., about \$5,000) for tax years 2012, 2014, and 2015. He and his spouse had taxable income of more than \$100,000 annually for tax years 2011–2015.

Applicant had no further information or documentation for the \$7,909 charged-off account in SOR ¶ 1.c.²¹ He disclosed the account in his 2012 security clearance application, and he was asked about it during his 2012 background investigation.²² The account is listed in credit reports from 2012 and 2015.²³ He explained he was paying off other credit card accounts and by the time he got to this account, it had been written off,

¹⁴ Exhibit B.

¹⁵ Exhibit D.

¹⁶ Exhibit C.

¹⁷ Exhibit E.

¹⁸ Exhibits C and F.

¹⁹ Exhibit C.

²⁰ Exhibits D–H.

²¹ Tr. 46–52.

²² Exhibits 1 and 2.

²³ Exhibits 3, 4, and 5.

and he thought he could do nothing more with the account.²⁴ He has made no recent efforts to resolve the debt, and it remains unresolved.

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

²⁴ Answer to SOR.

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.

reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.³⁴

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.

³⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties as well as inability or unwillingness to satisfy debts, and a failure to file federal income tax returns for two years. His tax problems with the IRS for tax years 2009 and 2010 combined with his lack of attention to the unresolved charged-off credit card account for \$7,909 are sufficient to raise a serious concern.³⁹ His tax problems were discovered during the 2009 tax season, but went unresolved until October 2014 when he made the last payment for tax year 2010.⁴⁰ His tax problems deserve close examination because failure to timely file tax returns or pay taxes suggests that an applicant has a problem complying with well-established governmental rules and systems. And voluntary compliance with such rules and systems is essential for protecting classified information.

I considered the six mitigating conditions under Guideline F,⁴¹ and none, individually or taken together, is sufficient to mitigate the concern. Applicant's tax problems are due to his negligence in 2009, when he mishandled the check from the 401(k) account, and it was not seen again until sometime in 2010. His tax problems were recently resolved in October 2014. It is also noted that most of the back taxes for 2009 and 2010 were paid by application of refunds from other tax years as opposed to voluntary payments. Further, his financial problems are ongoing as reflected by the unresolved charged-off account for \$7,909. He has had the past several years to address the account, and he has done nothing to address it once it was charged off, which does not eliminate or cancel out the indebtedness. Given his level of annual income, he should have been in a position to pay off or settle this account for a lesser amount without great difficulty. Based on the totality of facts and circumstances, I conclude that Applicant did not make a reasonable effort to resolve his tax problems or resolve the charged-off account.

In addition to considering the formal mitigating circumstances, I gave favorable consideration to Applicant's honorable military service; his long record of holding a security clearance without a security infraction or violation; his good employment record; and his voluntarily reporting of adverse financial information in his security clearance application. Although those circumstances are certainly favorable, they are not enough to completely mitigate the serious concern stemming from his tax problems and the unresolved charged-off account.

Applicant's history of financial problems or difficulties 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*

³⁹ AG ¶¶ 19(a), (c), and (g).

⁴⁰ Exhibit C.

⁴¹ AG ¶ 20(a)–(f).

versa. I also gave due consideration to the whole-person concept.⁴² 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 as follows:

Paragraph 1, Guideline F:	Against Applicant
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Subparagraphs 1.a–1.e:	Against Applicant
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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

⁴² AG ¶ 2(a)(1)–(9).