



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



In the matter of:)
)
-----) ISCR Case No. 15-02836
)
Applicant for Security Clearance)

Appearances

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

10/25/2016

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. He did not present sufficient documentary evidence to mitigate the concern stemming from two unpaid tax liens for about \$25,000 and ten collection or past-due accounts. 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 January 9, 2013.¹ Nearly three years later on November 19, 2015, after reviewing the application and information gathered during a background investigation, the Department of Defense (DOD)² sent Applicant a statement of reasons

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.

(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 on December 19, 2015.

Neither Applicant nor Department Counsel requested a hearing, and so the case will be decided on the written record.⁴ On January 21, 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 February 15, 2016. He did not reply within the 30-day period from receipt of the FORM. The case was assigned to me on August 23, 2016.

Procedural Matters

The allegation in SOR ¶ 1.g is amended *sua sponte* to conform to the evidence, which shows that the \$7,920 tax lien in question is a state tax lien, not a federal tax lien.

Findings of Fact

Applicant is a 53-year-old employee who requires a security clearance for his job as a aircraft mechanic for a company working in the defense industry. He has been so employed since 2009. Before that, he was employed in a similar capacity with different companies during 2006–2009. His employment history includes 20 years of active duty military service, which ended with his retirement in 2006. He is married and has three adult children.

Under Guideline F, the SOR, as amended, alleges the following: (1) a \$7,920 state tax lien filed in September 2011; (2) a \$17,744 federal tax lien filed in August 2012; and (3) ten collection or past-due accounts for a total of about \$3,629. In his answer to the SOR, Applicant admitted the SOR allegations and provided brief explanations for some of the items. In addition to his admissions, the SOR allegations are established by information contained in credit reports from January 2013, March

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.

2015, and October 2015.⁶ He did not submit supporting documentation with his answer to the SOR. Likewise, did not submit documentation in response to the FORM.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁷ 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.”⁸ 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.⁹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁴ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁵

⁶ Exhibits 4, 5, and 6.

⁷ *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).

⁸ 484 U.S. at 531.

⁹ Directive, ¶ 3.2.

¹⁰ Directive, ¶ 3.2.

¹¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹² Directive, Enclosure 3, ¶ E3.1.14.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ *Egan*, 484 U.S. at 531.

The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁶

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.¹⁷ 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,¹⁸ 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.¹⁹ 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.²⁰

The concern under Guideline F 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.

¹⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁷ Executive Order 10865, § 7.

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

¹⁹ 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).

²⁰ AG ¶ 18.

The evidence supports a conclusion that Applicant has a problematic financial history within the meaning of Guideline F.²¹ I reach that conclusion based on the findings of fact that show Applicant has two outstanding tax liens for more than \$25,000 and has several unpaid collection or past-due accounts. The state and federal tax liens demonstrate that Applicant owes back taxes for the relevant tax years, tax authorities filed the liens several years ago in 2011 and 2012, and those matters remain unresolved. He presented no documentation to show that the tax liens and the other delinquent accounts were paid, settled, in repayment, cancelled, forgiven, or otherwise resolved.

I have considered the six mitigating conditions under Guideline F,²² and conclude that Applicant has not presented sufficient information to explain, extenuate, or mitigate the facts proven by the written record. He has not presented a reasonable plan to resolve his delinquent debts, nor has he demonstrated a firm commitment to adhering to a plan. The facts do not support application of AG ¶ 20(c), the problem is being resolved or is under control, or AG ¶ 20(d), making a good-faith effort to repay. Simply put, Applicant has known or should have known for some time that his tax problems were a concern in the security clearance process, he has had sufficient time and opportunity to address his tax problems, and yet those matters are unresolved. His inability or unwillingness or procrastination in dealing with his tax problems raises doubts about his judgment and willingness to follow rules and regulations.

The concern over Applicant's problematic financial history 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.²³ 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 his 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.i:	Against Applicant

²¹ AG ¶¶ 19(a) and (c).

²² AG ¶ 20(a)–(f).

²³ AG ¶ 2(a)(1)–(9).

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