



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



In the matter of:)
)
-----) ISCR Case No. 15-04195
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2017

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, or 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 June 26, 2013. This document is commonly known as a security clearance application. Nearly three years later on March 21, 2016, 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.¹ The SOR is similar to a complaint. It

¹ 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 on April 13, 2016; he admitted the seven factual allegations without explanation; and he did not submit supporting documentation. He also requested a decision based on the written record without a hearing.

On May 31, 2016, Department Counsel submitted all relevant and material information that could be adduced at a hearing.² The file of relevant material (FORM) was mailed to Applicant, who received it on June 13, 2016. He replied with a one-page memorandum, which is made part of the record as Exhibit A. The case was assigned to me several months later on March 24, 2017.

Findings of Fact

Applicant is a 35-year-old employee who requires a security clearance for his job as a technician for a shipbuilding company. He has worked for this company since 2013. This appears to be the first time he has applied for a security clearance. Before his current employment, he worked as a technical support representative during 2006-2013. Before that, he was unemployed from July 2006 to November 2006. Before that, he worked as a machine maintenance technician during 2004-2006. He has no previous federal civilian employment or military service. He has never married and has no children. He was awarded an associate's degree from a technical institute in 2003.

In his June 2013 security clearance application, Applicant disclosed a history of financial problems consisting of delinquent student loan accounts in the amount of about \$15,000.³ He explained that the accounts were delinquent due to low wages. He disclosed no other delinquent accounts.

Under Guideline F for financial considerations, the SOR alleged a history of financial problems or difficulties consisting of (1) four student loan accounts with the Department of Education in collection for a total of about \$24,445, (2) a \$454 collection account, (3) a \$42 medical collection account, and (4) an unpaid judgment for \$994, which was obtained in 2007. Applicant does not dispute these delinquent accounts, and they are also established by credit reports.⁴ He 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.

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).

² 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.

³ Exhibit 3.

⁴ Answer to SOR; Exhibits 4 and 5.

In response to the FORM, Applicant explained that he was in the process of “fixing my student loan situation.”⁵ He stated that his wages had been garnished during the past few years to repay his student loans. He further stated that he was in the process of trying to arrange a payment plan for his student loans.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁶ 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.”⁷ 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.⁸ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁰ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹¹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹² In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹³

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

⁵ Exhibit A.

⁶ *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).

⁷ 484 U.S. at 531.

⁸ Directive, ¶ 3.2.

⁹ Directive, ¶ 3.2.

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

¹¹ Directive, Enclosure 3, ¶ E3.1.14.

¹² Directive, Enclosure 3, ¶ E3.1.15.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ *Egan*, 484 U.S. at 531.

Discussion

Under Guideline F for financial considerations,¹⁶ 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.¹⁷

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;

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 becoming financially overextended due to the size of his student loans versus his ability to repay. With that said, I have given little weight to

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

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

¹⁷ AG ¶ 18.

the three other delinquent accounts because they involve, cumulatively or individually, relatively minor amounts of money (less than \$1,500 in total).

Based on the written record before me, I am unable to credit Applicant in explanation, extenuation, or mitigation. Other than a five-month period in 2006, which was more than ten years ago, he has had full-time employment since 2004. He has had ample time since submitting his security clearance application in June 2013 to begin the process of putting his delinquent student loan accounts 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 any supporting documentation. Given these circumstances, I can only conclude that the four delinquent student loan 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
Subparagraphs 1.a – 1.d:	Against Applicant
Subparagraphs 1.e – 1.g:	For 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