



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



In the matter of:)
)
-----) ISCR Case No. 15-04342
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

11/22/2016

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for access to classified information. He presented sufficient documentary evidence to establish that he is making a good-faith effort to repay delinquent student loans. The situation is being resolved, albeit slowly, and is under control. 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 August 4, 2014.¹ About one year later on December 18, 2015, after reviewing the application and information gathered during a background

¹ Exhibit 3 (this document is commonly known as a security clearance application).

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 reasons for the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR with a one-page memorandum and supporting documentation on January 23, 2016.

Neither Applicant nor Department Counsel requested a hearing, and so the case will be decided on the written record.⁴ On March 2, 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 March 15, 2016. He replied within the 30-day period from receipt of the FORM, and those matters are admitted as Exhibit A. The case was assigned to me several months later on November 2, 2016.

Procedural Matters

Department Counsel's FORM includes Exhibit 4, which is a report of investigation (ROI) summarizing Applicant's interview that took place during the December 2014 background investigation. The summary is not authenticated as required under ¶ E3.1.20 of the Directive. Department Counsel's written brief includes a footnote advising Applicant that the summary was not authenticated and that failure to object may constitute a waiver⁶ of the authentication requirement. Nevertheless, a *pro se* applicant's failure to respond to the FORM does not equate to a knowing and voluntary waiver of the authentication requirement.⁷ The written record does not demonstrate that

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). 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.

⁶ See *Black's Law Dictionary*, 1717 (Bryan A. Garner ed., 9th ed., West 2009), for a definition of waiver.

⁷ See generally ISCR Case No. 12-10933 (App. Bd. June 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, including how plausible is

Applicant understood the concepts of authentication, waiver, and admissibility. It also does not establish that he understood the implications of waiving an objection to the admissibility of the ROI. Accordingly, Exhibit 4 is inadmissible and I have not considered the information in the ROI.

Findings of Fact

Applicant is a 43-year-old employee who requires a security clearance for his job working as a system administrator for a federal contractor. He has been so employed since 2012. He has worked for federal contractors since 2003. His employment history includes a stint working overseas in a country in the Middle East in support of the U.S. armed forces during 2003–2004. He married in 1999, and he and his spouse have two minor children. He has lived at the same residence since 2009 and in the same community since 2001. His educational background includes a bachelor's degree awarded in 2011.

Under Guideline F, the SOR alleged a history of financial problems or difficulties consisting of a 2005 Chapter 7 bankruptcy case as well as 30 delinquent student loans. Concerning the bankruptcy,⁸ which is now more than ten years old, Applicant explained it resulted from the reduction in income when Applicant decided to quit working overseas in August 2004 due to the high risk of death or injury.⁹ He explained it was a decision he and his wife made together after the birth of their second child in May 2004.¹⁰ The bankruptcy was disclosed and reviewed in a previous security clearance application and background investigation.

Applicant incurred the student loan debt when he was pursuing his bachelor's degree during 2006–2011. The 30 delinquent student loans fall into two groups. The first group is ten student loans in collection, alleged in SOR ¶¶ 1.a–j, for a total amount of about \$26,000. Those accounts are now in an active status and in repayment. In his April 12, 2016 reply to the FORM, Applicant presented an account statement, dated March 18, 2016, shows the following: (1) the ten student loan accounts are in active status; and (2) he has made a monthly payment of \$250 since March 2014, reducing the balance to \$24,967.¹¹

The second group is 12 delinquent student loans alleged in SOR ¶ 1.l, and 8 delinquent student loans alleged in SOR ¶ 1.m, for unspecified amounts of money. In

it to believe that a *pro se* applicant's failure to respond to a FORM should be understood as a knowing and intelligent waiver to the requirement for authentication of the ROI.).

⁸ Exhibit 8.

⁹ Answer to SOR.

¹⁰ Exhibit 1 (employment history).

¹¹ Exhibit A.

his January 23, 2016 answer to the SOR, Applicant explained that these loans are the same set of loans that have changed hands several times between creditors making it difficult to determine which creditor to pay. He included with his answer supporting documentation that shows the lender placed the 12 student loans in voluntary forbearance until April 28, 2016; the total amount to be repaid is about \$50,508; and the payment schedule calls for 109 payments of various amounts for a total of about \$463 per month. His plan is to work with the lender to consolidate the loans so there is single monthly payment, which should eliminate the confusion about the number of loans.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹² 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.”¹³ 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.¹⁴ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁹ In *Egan*, the Supreme

¹² *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).

¹³ 484 U.S. at 531.

¹⁴ Directive, ¶ 3.2.

¹⁵ Directive, ¶ 3.2.

¹⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁷ Directive, Enclosure 3, ¶ E3.1.14.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

Court stated that the burden of proof is less than a preponderance of the evidence.²⁰ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²¹

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.²² 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,²³ 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.²⁴ 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.²⁵

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

²⁰ *Egan*, 484 U.S. at 531.

²¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²² Executive Order 10865, § 7.

²³ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²⁴ 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).

²⁵ AG ¶ 18.

qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

In analyzing this case, I considered the following disqualifying and mitigating conditions under Guideline F:²⁶

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

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

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 here supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. The written record shows that Applicant went through Chapter 7 bankruptcy more than ten years ago and has a number of delinquent student loans. The written record also shows that he is making a good-faith effort to repay the student loans, and that the situation is being resolved, albeit slowly, and is under control. For the first group of student loans, Applicant has made monthly payments of \$250 since March 2014. For the second group of student loans, Applicant located the lender and the loans were placed in forbearance, and he is working to consolidate the loans into a single monthly payment. That was the status of the loans when the written record closed before the forbearance expired on April 28, 2016. Although he lacks a track record of repayment for the second group of loans, he has a good track record of repayment for the first group of loans. That is sufficient for me to conclude that he will repay the loans when they are no longer in forbearance.

Applicant's history of financial problems 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.²⁷ 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.

²⁶ AG ¶ 20(a)–(f).

²⁷ AG ¶ 2(a)(1)–(9).

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	For Applicant
---------------------------	---------------

Subparagraphs 1.a–1.m:	For Applicant
------------------------	---------------

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