



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



In the matter of:)
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-----)
aka -----) ISCR Case No. 15-04635
)
Applicant for Security Clearance)

Appearances

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

08/19/2016

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 sufficient to explain and mitigate Applicant's financial problems or difficulties. 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 December 12, 2014, for a periodic reinvestigation.¹ Thereafter, on February 4, 2016, 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 March 7 and 28, 2016, and requested a hearing.

The case was assigned to me on April 21, 2016. The hearing was held as scheduled on May 26, 2016. Department Counsel offered Exhibits 1–6, and they were admitted. Applicant presented one witness (his spouse), testified on his own behalf, and offered Exhibits A–B, and they were admitted. The transcript of the hearing (Tr.) was received on June 6, 2016.

Procedural Matters

Department Counsel withdrew the allegation in SOR ¶ 1.b, based on duplication of the allegation in SOR ¶ 1.d.⁴

Findings of Fact

Applicant is a 48-year-old employee who is seeking to retain a security clearance that he has held while working for the same company since 1995.⁵ His security clearance was last favorably adjudicated by the DOD in 2005.⁶ His background includes honorable service in the U.S. Army (both active and reserve).⁷ He is employed as an explosives specialist technician supervisor by a company that does research and development for a DOD agency.⁸ His first marriage ended in divorce in 1997. He

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. 15.

⁵ Exhibits 1 and 2.

⁶ Exhibit 3.

⁷ Tr. 57–58.

⁸ Tr. 56.

married his current spouse in 1999. He has an adult child from his first marriage and two minor children from his second marriage.⁹

Applicant has a history of financial problems or difficulties related primarily to foreclosure of a home in 2014. Under Guideline F, the SOR alleges the first and second mortgage loans for the home as well as three collection accounts, which total about \$1,330. He disclosed the foreclosure and a paid state tax lien in his 2014 security clearance application.¹⁰ He provided additional details about his financial record during his 2015 background investigation.¹¹ The SOR allegations are established by Department Counsel's documentary evidence as well as Applicant's admissions in his answer to the SOR and his hearing testimony.

Concerning the three collection accounts, Applicant explained the basis for those accounts and provided documentation showing that each is now paid.¹² The \$87 medical collection account went unpaid due to oversight.¹³ It was paid in February 2016.¹⁴ The \$263 collection account is for a telecommunications account. He denies having an account with the telecommunications company, but decided to pay it now and dispute it later. It was paid in February 2016.¹⁵ The \$980 collection account stems from a joint checking account with a credit union. The account was closed, but subsequent transactions resulted in overdraft fees. The account was referred for collection, and he resolved it with a payment of \$1,000.44 in May 2016.¹⁶ In addition, he paid a \$75 medical collection account in May 2016, which was not alleged in the SOR.¹⁷

Concerning the paid state tax lien, it stems from income earned by a daycare business operated by Applicant's wife during 2008–2012 from their home. She made quarterly estimated tax payments, but believes some of the payments were not received. A lien for \$3,315 was filed in January 2013, and it was paid by withholding from Applicant's pay in April 2014.¹⁸

⁹ Exhibit 2.

¹⁰ Exhibit 1.

¹¹ Exhibit 2.

¹² Tr. 32–36; Exhibit A.

¹³ Exhibit 2.

¹⁴ Exhibit A at 19–20.

¹⁵ Exhibit A at 25.

¹⁶ Exhibit A at 21–23.

¹⁷ Exhibit 6 at 2; Exhibit A at 24.

¹⁸ Exhibits 4 and B.

The foreclosure is related to a home Applicant and his spouse purchased for about \$115,000 in 2001; the loan was refinanced in 2004 for about \$117,662; and the loan was refinanced again in 2010 for about \$109,466 at a lower interest rate. They obtained a second mortgage loan for \$20,365 in 2006 for upgrades and improvements. The home was located in a relatively new subdivision, and the developer sold to another developer who converted many homes to Section 8 housing, which is designed to provide affordable housing for people who struggle to pay rent. Home values declined as did the quality of the neighborhood due to an increase in crime.¹⁹ The criminal activity included break-ins into their home and theft of property as well as illegal drug activity and drive-by shootings in the neighborhood. He described one incident when his wife and sons had returned home and caught people in the home.²⁰

Applicant and his wife decided their family's safety was more important than staying in the home. They attempted to sell in 2012 without a real estate agent.²¹ They also worked with a real estate agent in 2013. A short sale fell through, and they were behind on the loans because they were saving money for rent for their next (and current) residence. They remained in the home before, during, and after the foreclosure (described below) in an effort to cure the foreclosure but were unsuccessful. They moved into their current rental property in August 2014.

The first mortgage lender sued for foreclosure and obtained a stipulated and default judgment in early 2014.²² In May 2014, the state court awarded the first mortgage lender a judgment for \$139,151, which included the principal balance of \$107,711. Per court order, the house was sold later that year with the first mortgage lender buying it for \$105,410.²³ The court prohibited the first mortgage lender from obtaining a deficiency judgment unless and until it files a motion for deficiency judgment. Credit reports from 2015 and 2016 show a \$0 balance for this account.²⁴

The second mortgage loan is more than 180 days past due with a past-due balance of about \$13,368.²⁵ Applicant has been in telephonic contact with the lender, and they proposed a one-time lump-sum payment of about \$6,090. He currently lacks the financial means to make the lump-sum payment, and so his plan is to apply for a

¹⁹ Tr. 38–39.

²⁰ Tr. 39.

²¹ Tr. 66–67.

²² Exhibit A at 8–15.

²³ Exhibit A at 15–18.

²⁴ Exhibits 5 and 6.

²⁵ Exhibits 5 and 6; Tr. 43–44, 47, 58–59.

personal loan from his bank or a family member. Otherwise, he described his overall financial condition as stable.²⁶

Law and Policies

It is well-established law that no one has a right to a security clearance.²⁷ 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.”²⁸ 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.²⁹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.³⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.³¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³⁴

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³⁵ The DOHA Appeal Board has followed the Court’s

²⁶ Tr. 42.

²⁷ *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).

²⁸ 484 U.S. at 531.

²⁹ Directive, ¶ 3.2.

³⁰ Directive, ¶ 3.2.

³¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³² Directive, Enclosure 3, ¶ E3.1.14.

³³ Directive, Enclosure 3, ¶ E3.1.15.

³⁴ Directive, Enclosure 3, ¶ E3.1.15.

³⁵ *Egan*, 484 U.S. at 531.

reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.³⁶

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.³⁷ 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,³⁸ 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.³⁹ 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.⁴⁰

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.

³⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

³⁷ Executive Order 10865, § 7.

³⁸ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

³⁹ 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).

⁴⁰ AG ¶ 18.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties as well as inability to satisfy debts.⁴¹ With that said, I am primarily concerned about the foreclosure and the first and second mortgage loans. The relatively small collection accounts as well as the paid state tax lien, which was not alleged in the SOR, are not of great concern. The facts and circumstances show that indebtedness was not incurred by frivolous or irresponsible spending, and there is no evidence of an unwillingness to pay.

I considered the six mitigating conditions under Guideline F,⁴² and the following are most pertinent:

AG ¶ 20(b) the conditions that resulted in the financial problem 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.

Applicant did not present a perfect case, but the evidence is sufficient to explain and mitigate the concern stemming from his financial problems or difficulties. First, AG ¶ 20(b), applies in Applicant's favor because the foreclosure was greatly influenced by circumstances largely beyond his control. Neither Applicant nor his spouse could have anticipated when they bought the house in 2001 the change of circumstances they experienced years later. The market value of the home declined due to the Section 8 housing and an increase in criminal activity. He made a reasonable and responsible decision to put his family's safety and security ahead of home ownership. Moreover, he simply did not walk away from the home and mail the keys to the mortgage lender, but tried without success to sell the home before foreclosure. Those are not the actions of an irresponsible person.

Second, AG ¶ 20(c) applies in Applicant's favor because there are clear indications that the worst of this situation is over and safely in the past. The six-figure judgment in foreclosure was resolved by the sale of the home to the first mortgage lender and the lack of a deficiency balance. The remainder, the second mortgage loan, is in the process of being resolved by a proposed settlement for a lesser amount. He has a realistic plan to make the lump-sum payment by obtaining a personal loan.

⁴¹ AG ¶¶ 19(a) and (c).

⁴² AG ¶ 20(a)–(f).

Third, AG ¶ 20(d) applies in Applicant's favor based on paying the collection accounts and the state tax lien discussed above.

In addition to 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 long record of employment with the same company; his voluntarily reporting of adverse financial information in his security clearance application; and the fact that he was truthful and complete in responding to questions during the security-clearance process. Those circumstances are good indicators of stability, reliability, trustworthiness, and good judgment. I also took into account that the foreclosure occurred under an unusual set of circumstances, and it is unlikely that Applicant will be faced with similar circumstances in the future.

Applicant's history of financial problems or difficulties 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.⁴³ 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.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Withdrawn
Subparagraphs 1.c–1.f:	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

⁴³ AG ¶ 2(a)(1)–(9).