



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-05100

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel

For Applicant: *Pro se*

04/17/2017

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. He presented sufficient evidence to explain, extenuate, or mitigate the security concern stemming from his problematic financial history. 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 April 2, 2013. This document is commonly known as a security clearance application. On December 31, 2015, 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 her eligibility for access to classified information.¹ The SOR is

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),

similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on February 8, 2016, and requested a decision based on the written record without a hearing.

On April 27, 2016, Department Counsel submitted a file of all relevant and material information (FORM).² Included in the FORM were five items of evidence, which I have marked as Government Exhibits 1 through 5. Exhibits 1, 2 and 4, 5 are admitted into evidence. Exhibit 3 will be discussed below. The FORM was mailed to Applicant, who received it on June 5, 2016. Applicant did not respond to the FORM. The case was assigned to me on March 10, 2017.

Procedural Matters

Department Counsel's FORM includes Exhibit 3, which is a report of investigation (ROI) summarizing Applicant's interview that took place during the May 2013 background investigation. The ROI is not authenticated as required under ¶ E3.1.20 of the Directive.³ Department Counsel's written brief includes a footnote advising Applicant that the summary was not authenticated and that his failure to object may constitute a waiver of the authentication requirement. Nevertheless, I am not persuaded that a *pro se* applicant's failure to respond to the FORM, which response is optional, equates to a knowing and voluntary waiver of the authentication requirement. The record does not demonstrate that Applicant understood the concepts of authentication, waiver, and admissibility. It also does not demonstrate that he understood the implications of waiving an objection to the admissibility of the ROI. Accordingly, Exhibit 3 is inadmissible, and I have not considered the information in the ROI.

Findings of Fact

Applicant is 38 years old, married with a step-son age 11, and three other sons, one age 3, and twins age 4. Since September 1, 2014, he has been employed as an IT technician by a defense contractor.

The SOR alleged three credit card accounts and one line of credit account that have been charged off in the total amount of \$69,000. The SOR also alleged a utility account in collection in the amount of \$2,039. Applicant's answer admitted those

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 See generally ISCR Case No. 12-10933 (App. Bd. Jun. 29, 2016) (In a concurring opinion, Judge Ra'anan 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'anan raises a number of pertinent questions about using an unauthenticated ROI in a non-hearing case with a *pro se* applicant.).

delinquent accounts with explanations as to their current status.⁴ Applicant's admissions and supporting documentation are made part of the findings of fact herein.

The first and third debts, credit card accounts totaling \$31,804, have been placed with a credit counseling and debt-management service, and Applicant has made monthly payments under that plan in the amount of \$1,335 since November 7, 2014.⁵ Applicant plans to place the second credit card debt, in the amount of \$31,396, with the credit counseling and debt-management service once he has defrayed the first and third debts. In the meantime, the credit counseling and debt-management service was able to arrange for the creditor to reduce the interest on that account to zero percent. As to the line of credit account, in the amount of \$5,800, that debt was cancelled by the creditor in 2015.⁶ Finally, as to the utility account placed for collection in the amount of \$2,039, Applicant paid that balance on February 5, 2016.⁷ Applicant also provided a personal financial statement as of January 29, 2016, that shows he has sufficient monthly income to meet his household expenses.

Applicant's answer detailed the numerous causes of his financial woes. He was unexpectedly laid off in June 2012 through November 2012, when his defense contractor employer lost the contract that Applicant was servicing. During that period of unemployment, Applicant's spouse gave birth to twin boys, who arrived prematurely, thus requiring four to six weeks in an intensive care unit, which was not covered by medical insurance, because Applicant was unemployed.⁸ At that time, Applicant already had a seven year-old step-son who was a diabetic and required monthly visits to a specialty children's hospital. Applicant's fourth son was born in October 2013 with a medical condition requiring hospitalization and physical therapy, which was not fully covered by his medical insurance. Since 2012, Applicant has stayed current on all of his sons' medical bills. In 2015, Applicant's spouse developed a vascular condition that required treatment in an intensive care unit, which led to a urological condition requiring numerous surgeries. Applicant stated that the debt incurred due to his spouse's medical condition is solely on her credit card, but that he is working with her to pay those bills.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁹ As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard

⁴ Exhibit 2.

⁵ Exhibit 2.

⁶ Exhibits 1 and 2.

⁷ Exhibit 2.

⁸ Exhibit 2.

⁹ *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).

indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ 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.¹¹ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹²

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹³ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁴ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁵ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁶

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁷ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁸

Discussion

Under Guideline F for financial considerations,¹⁹ 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:

¹⁰ 484 U.S. at 531.

¹¹ Directive, ¶ 3.2.

¹² Directive, ¶ 3.2.

¹³ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁴ Directive, Enclosure 3, ¶ E3.1.14.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ *Egan*, 484 U.S. at 531.

¹⁸ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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

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.²⁰

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 had a problematic financial history sufficient to raise a security concern under AG ¶¶ 19(a) and (c). Applicant's financial problems began when he was unexpectedly laid off in June 2012 and remained unemployed through November 2012. Complicating that layoff was the premature birth of his twin sons during that period of unemployment and the treatment those infants required that was not covered by medical insurance. At the same time, Applicant's step-son required special treatment for diabetes. And the fourth son who arrived in October 2013 also required special post-natal medical care. It is not surprising that this chain of events put considerable strain on Applicant's finances. I conclude that Applicant's financial problems were caused by circumstances largely beyond his control, thus calling into play AG ¶ 20(b).

The next inquiry under AG ¶ 20(b) is whether Applicant acted responsibly under those circumstances. As far back as November 2014, Applicant knew he needed

²⁰ AG ¶ 18.

financial counseling, and, therefore, he enlisted the aid of a credit counseling and debt-management service. He placed two of his larger debts on a monthly payment plan and has documented that he has adhered to that plan. In addition, Applicant succeeded in having one debt cancelled and paid in full another overdue account. That one of the debts (SOR ¶1.b) is not yet resolved is not determinative. An applicant is not required to show that every debt in the SOR has been paid. Rather, an applicant is required to demonstrate that he or she has “established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.” ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008).²¹ Applicant has stated his intention to make that one open debt a part of his existing payment plan once the first two accounts currently under the plan have been defrayed.²² I conclude that Applicant’s plan is a reasonable one and that he has taken significant actions to implement that plan. I further conclude that Applicant has acted responsibly under the circumstances, that there are clear indications that his financial problems are being resolved, or are under control, and he has made good-faith efforts to pay or otherwise resolve his indebtedness.²³

The record does not create doubt about Applicant’s 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 Applicant 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:

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

²¹ See *a/s/o* ISCR Case No. 14-00504 at 3 (Aug. 4, 2014).

²² Admittedly, the second debt alleged in the SOR is substantial, \$31,396. As noted, Applicant and his credit counselling and debt-management service managed to have that creditor reduce the interest charged to zero percent. It is fair to surmise that this was accomplished, because that creditor is the same creditor as the first SOR debt alleged, which debt is being defrayed under the payment plan.

²³ AG ¶ 20(b), (c) & (d).

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas
Administrative Judge