



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



In the matter of:)
)
) ISCR Case No. 15-05185
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

04/26/2017

Decision

KATAUSKAS, Philip J., 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 December 2, 2014. This document is commonly known as a security clearance application. On February 24, 2016, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility 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.

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

It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on March 18, 2016, and requested a decision based on the written record without a hearing.

On April 22, 2016, Department Counsel submitted a file of all relevant and material information (FORM).² The FORM was mailed to Applicant, who received it on May 6, 2016. Applicant did not respond to the FORM. The case was assigned to me on March 10, 2017.

Procedural Matters

Included in the FORM were four items of evidence, which are marked as Government Exhibits 1 through 3. Exhibits 1 through 3 are admitted into evidence. Exhibit 4 is a report of investigation (ROI) summarizing Applicant's interview that took place during the March 2015 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 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 4 is inadmissible, and I have not considered the information in the ROI.

Findings of Fact

Applicant is 32 years old, and a high school graduate with some college credits but no degree. He was divorced and then re-married, and he has been married to his current spouse since June 2010. Applicant has two minor children, one adult stepchild and one minor stepchild. He served on active duty in the U.S. Navy from 2005 until 2011 and as a reservist from 2011 until he was honorably discharged in 2013. Since August 2011, Applicant has been employed by a defense contractor.⁴

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).

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'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 with a *pro se* applicant.).

⁴ Exhibit 3.

The SOR alleged 11 delinquent debts totaling approximately \$35,000. Applicant admitted each debt, with explanations.⁵ Applicant produced documentation that one of the debts, SOR paragraph 1.d (\$768), has been paid in full. Applicant submitted no evidence that the other debts have been paid, are being paid, or are otherwise resolved. Applicant's admissions taken in conjunction with other evidence in the record paint the following picture:

Applicant enlisted in the U.S. Navy in October 2005. He served on active duty and was on his third Persian Gulf deployment, when he was notified that he would be discharged in two weeks, in June 2011.⁶ His discharge was involuntary and due to a service-wide personnel draw-down. As a result of his discharge, he lost medical and other benefits he enjoyed while on active duty (medical benefits, basic allowance for housing, and hazardous duty pay while on deployment). After his discharge, he did not secure full-time employment until August 2011, when he was hired by his current employer.⁷ When he was discharged from the U.S. Navy, his spouse was pregnant and gave birth to his daughter in February 2012. As a civilian, Applicant and his family had some unforeseen medical problems, which caused debts that were not fully covered by his medical insurance. At some point, his spouse lost her job.⁸ At the time, Applicant's job was low-paying and was insufficient to cover the medical bills and other household expenses, which led to the debts at issue here.

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 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.

⁵ Exhibits 1 and 2. Because SOR debts 1.a and 1.c are in identical amounts (\$7,525), I suspected they might be duplicates. They are not. SOR debt 1.c should be in the amount of \$447 (Exhibit 5) or \$420 (Exhibit 6). The amount pleaded in SOR debt 1.a (\$7,525) is correct. Exhibit 5.

⁶ Exhibits 2 and 3.

⁷ The Government argues that Applicant had no periods of unemployment. Government Brief, p. 3. That is technically correct, but from his service discharge in June 2011 until being hired by his current employer in August 2011, his only livelihood was part-time service in the reserves. Exhibit 3, pp. 12 – 13, 18.

⁸ The record is unclear when his spouse lost her job or how long she remained unemployed. I have assumed that the loss of her job adversely impacted the family finances.

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 (no right to a security clearance).

¹⁰ 484 U.S. at 531.

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:

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

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).

²⁰ AG ¶ 18.

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 AG ¶¶ 19(a) and (c). The inquiry, then, is whether any of the mitigating conditions under Guideline F apply. It appears that his financial problems stemmed principally from his admittedly precipitous discharge from the U.S. Navy. That event deprived him of the pay and benefits he had enjoyed while on active duty. He needed to find a civilian job quickly. And it appears that the job he did find, at least initially, was low-paying and had marginal medical benefits. Not long after Applicant left the Navy, his daughter was born, in February 2012. Adding to his financial woes were family medical problems that put a financial strain on his household budget. Aggravating that strain was his spouse's loss of her job, although the record does not specify when she lost her job or how long she remained unemployed. In any event, losing her income created additional financial hardships for Applicant and his family. I conclude that Applicant's financial problems were caused by circumstances largely beyond his control, triggering AG ¶ 20(b).

That conclusion, however, does not end the analysis under AG ¶ 20(b). Under AG ¶ 20(b), Applicant must demonstrate that he acted "responsibly under those [adverse] circumstances." The record shows that Applicant resolved only one of the debts at issue. There is nothing in the record showing that the other ten debts are being addressed in any manner. A security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's

judgment, reliability, and trustworthiness.²¹ I conclude that Applicant has not acted responsibly under the circumstances that caused his delinquent debts, as required by AG ¶ 20(b).²²

The record creates 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*. I also gave due consideration to the whole-person concept.²³ Accordingly, I conclude that Applicant 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-c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e-k:	Against 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.

Philip J. Katauskas
Administrative Judge

²¹ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008).

²² I further conclude that AG ¶¶ 20(c) and (d) do not apply.

²³ AG ¶ 2(a)(1)-(9).