



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 15-06344

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

05/09/2017

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 October 23, 2014. This document is commonly known as a security clearance application. On April 8, 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. It detailed the

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

factual reasons for the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on May 10, 2016, and requested a decision based on the written record without a hearing.

On June 6, 2016, Department Counsel submitted a file of relevant material (FORM).² The FORM was mailed to Applicant on that same day. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant received the FORM on June 9, 2016.³ Applicant did not respond to the FORM. The case was assigned to me on April 7, 2017.

Procedural Matters

Included in the FORM were five items of evidence, which are marked as Government Exhibits 1 through 4.⁴ Exhibits 1, 3 and 4 are admitted into evidence. Exhibit 2 is a report of investigation (ROI) summarizing Applicant's interview that took place during the February 2015 background investigation. The ROI is not authenticated as required under ¶ E3.1.20 of the Directive.⁵ 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 2 is inadmissible, and I have not considered the information in the ROI.

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 The Defense Office of Hearings and Appeals' (DOHA) transmittal letter is dated June 6, 2016, and Applicant's receipt is dated June 9, 2016. The DOHA transmittal letter informed Applicant that he had 30 days after receiving it to submit information.

⁴ The first item in the FORM is the SOR and Applicant's Answer. Because the SOR and the Answer are the pleadings in this case, they are not marked as Exhibits. Items 2 through 5 are marked as Exhibits 1 through 4.

⁵ 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.).

Findings of Fact

Applicant is 49 years old and is a high school graduate. He is divorced and has three children, ages 25, 13, and 11. He served in the U.S. Air Force from 1985 to 1989, and in the Air National Guard from 1989 until 1994. He was honorably discharged from both services.⁶ Since September 2011, he has been employed by a defense contractor.

The SOR alleges 12 financial concerns, consisting of accounts that have been charged off or placed for collection, totaling \$26,055. In his Answer, Applicant states that he is not the owner of four accounts totaling \$8,541 (1.a, b, c, and l). He states that he has paid two medical accounts totaling \$2,077 (1.d and e). He also states that he is paying the remaining medical accounts totaling \$1,120 (1.f through j) and the child support account totaling \$14,317 (1.k). According to the March 2016 credit report, the debts alleged in the SOR are individual accounts owned by Applicant.⁷ Applicant's Answer did not include any documents.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁸ 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."⁹ 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.¹⁰ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹¹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹² The Government has the burden of presenting

⁶ Exhibit 1.

⁷ Exhibit 4.

⁸ *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).

⁹ 484 U.S. at 531.

¹⁰ Directive, ¶ 3.2.

¹¹ Directive, ¶ 3.2.

¹² ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

evidence to establish facts alleged in the SOR that have been controverted.¹³ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁴ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁵

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁶ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁷

Discussion

Under Guideline F for financial considerations,¹⁸ 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.¹⁹

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;

¹³ Directive, Enclosure 3, ¶ E3.1.14.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

¹⁶ *Egan*, 484 U.S. at 531.

¹⁷ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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

¹⁹ AG ¶ 18.

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). Applicant has produced no documentation to support his answers to the SOR debts. In fact, the evidence is contrary to his answers. The Appeal Board has repeatedly held that applicants must present documentation to support their claims that debts have been resolved.²⁰ I conclude that none of the Guideline F mitigating conditions apply.

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.²¹ 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

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.i:	Against Applicant

²⁰ See, e.g., ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008) (it is reasonable for a judge to expect an applicant to present documentation about the satisfaction or other resolution of individual debts); ISCR Case No. 06-17520 at 2 (App. Bd. Sep. 20, 2007).

²¹ AG ¶ 2(a)(1)-(9).

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