



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06390

Appearances

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

For Applicant: *Pro se*

04/11/2017

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for access to classified information. He did not produce 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 March 4, 2015. This document is commonly known as a security clearance application. About a year later on April 12, 2016, 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 him eligibility for access to classified information.¹ The SOR is similar to a complaint. It detailed the factual reasons for 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 addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG),

action under the security guidelines known as Guideline F for financial considerations, Guideline B for foreign influence, and Guideline E for personal conduct. He answered the SOR with a one-page memorandum on June 9, 2016, and he requested a hearing. Department Counsel withdrew the SOR allegations under Guideline B for foreign influence and Guideline E for personal conduct on August 10, 2016.²

The case was assigned to me September 13, 2016. The hearing was held as scheduled on November 8, 2016. Department Counsel offered Exhibits 1-6, and they were admitted. Applicant testified on his own behalf and offered Exhibits A and B, and they were admitted. The transcript of hearing (Tr.) was received November 15, 2016.

Findings of Fact

Applicant is a 59-year-old employee who requires a security clearance for his job as a network designer/engineer with a company doing business in the defense industry. He has worked for this company since 2008. His educational background includes a bachelor's degree. He is married, and he and his spouse have two adult children, ages 26 and 19.

Under Guideline F for financial considerations, the SOR alleged a history of financial problems or difficulties consisting of the following matters: (1) a 1997 Chapter 7 bankruptcy ending in discharge; (2) a charged-off credit card account for \$3,775; and (3) a charged-off line of credit or loan for \$16,327. In his answer to the SOR, he did not address the Chapter 7 bankruptcy case, he denied the charged-off credit card account on the basis that it had already been paid, and he admitted the other charged-off account, explaining it was related to medical and other related expenses for his children's care for a serious medical condition.

Applicant explained that the Chapter 7 bankruptcy case was related to a cross-country move that resulted in leaving a house behind that was to be rented to tenants.³ The Chapter 7 bankruptcy paperwork shows that Applicant and his spouse received a standard discharge, with total assets valued at \$93,911, and total liabilities valued at \$103,628.⁴ Listed as secured liabilities were an automobile loan for \$16,181, first and second mortgage loans for about \$63,477 in total, and HOA dues of \$2,342. Listed as unsecured liabilities were six credit card accounts, a small medical account, a small collection account, and two student loan accounts.

Applicant explained that the \$3,775 charged-off account stems from a credit card account, post-bankruptcy, that he had thought had been paid off during a refinancing of

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 Tr. 17-19.

³ Tr. 50-52.

⁴ Exhibit 5.

a mortgage loan.⁵ In time the account was referred to a collection agency, and Applicant settled the account for a lesser amount (about \$1,800) in February 2013.⁶

Applicant explained that the \$16,327 charged-off account stems from an unsecured line of credit or loan that was obtained to pay for medical and other related expenses due to his children's care.⁷ The March 2015 credit report, which was obtained during his background investigation, shows the account was opened in December 2010, went into collection, and was then charged off in the amount of \$16,327.⁸ He was asked about this debt during his May 2015 background investigation, and he stated that he was unaware when it became delinquent because his spouse takes care of the family finances.⁹ He further explained that he intended to set the account up for a monthly payment of \$320. At the hearing, he explained that they are trying to work with the creditor to reach a settlement for a lesser amount.¹⁰ He produced no documentation showing a payment record or other progress in resolving the account. Applicant's most recent October 2016 credit report lists the account as a negative item, and its current status is described as charged off in the amount of \$16,327.¹¹

Applicant stated that his annual base salary is about \$93,000, plus a bonus of \$3,000 to \$5,000.¹² His wife is employed outside the home as a cosmetologist earning about \$35,000 to \$40,000 annually.¹³ He stated that he has about \$2,000 to \$3,000 in a checking account, a few hundred dollars in a savings account, and about \$93,000 in a 401(k) account.¹⁴ He said he was currently repaying a \$25,000 loan against his 401(k) account for his children's college expenses.¹⁵

⁵ Tr. 52-54.

⁶ Exhibit B.

⁷ Tr. 54-55.

⁸ Exhibit 3.

⁹ Exhibit 2.

¹⁰ Tr. 55-56.

¹¹ Exhibit A.

¹² Tr. 46-47.

¹³ Tr. 47-48.

¹⁴ Tr. 59-60.

¹⁵ Tr. 60-61.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁶ 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.”¹⁷ 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.¹⁸ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁰ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²¹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²² In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²³

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.²⁴ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁵

¹⁶ *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).

¹⁷ 484 U.S. at 531.

¹⁸ Directive, ¶ 3.2.

¹⁹ Directive, ¶ 3.2.

²⁰ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²¹ Directive, Enclosure 3, ¶ E3.1.14.

²² Directive, Enclosure 3, ¶ E3.1.15.

²³ Directive, Enclosure 3, ¶ E3.1.15.

²⁴ *Egan*, 484 U.S. at 531.

²⁵ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

Discussion

Under Guideline F for financial considerations,²⁶ 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.²⁷

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; 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 Guideline F. His financial problems appear to be the result of an over reliance on credit as well as an inattention to his financial affairs. Normally, a 20-year-old Chapter 7 bankruptcy case would not present much of a current problem, but it is part of a long-term pattern of inattention to his financial affairs. He is credited with acting in good faith by settling the charged-off credit card account in 2013, well before the current security clearance process began. Unfortunately, he has taken no concrete action to address the largest delinquent debt, the \$16,327 charged-off account. That account was opened in 2010, and it has been on

²⁶ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²⁷ AG ¶ 18.

the books for several years. He was put on notice that the debt was an item of concern during his 2015 background investigation, yet he has done little to resolve it.

Considering the totality of circumstances, I am not persuaded that Applicant's financial problems are due to circumstances largely beyond his control, and that he has acted responsibly under difficult and trying circumstances. Without doubt, his children's serious medical condition are circumstances beyond his control, but he has not acted responsibly under the circumstances. The facts establish that he has not made a serious, good-faith effort to resolve a large charged-off account. At this point, given his proclivity for inattention to his financial affairs, it is too soon to tell if he will follow through on his stated intention to resolve the charged-off account.

Applicant's history of financial problems creates doubt about his 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 he has not 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:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline B:	Withdrawn
Subparagraph 2.a:	Withdrawn
Paragraph 3, Guideline E:	Withdrawn
Subparagraph 3.a:	Withdrawn

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.

Michael H. Leonard
Administrative Judge