



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



In the matter of:

)
)
) ISCR Case No. 15-08177
)
)

Applicant for Security Clearance

Appearances

For Government: Gina L. Marine, Esq., Department Counsel

For Applicant: *Pro se*

04/11/2017

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny 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 June 16, 2015. This document is commonly known as a security clearance application. On February 12, 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 addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG),

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 8, 2016, and requested a decision based on the written record in lieu of a hearing.

On April 13, 2016, Department Counsel submitted a file of all relevant and material information (FORM).² Included in the FORM were eight items of evidence, which are marked as Government Exhibits 1 through 8. Government Exhibits 1 through 3 and 5 through 8 are admitted into evidence. Government Exhibit 4 is discussed below. The FORM was mailed to Applicant, who received it on April 27, 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 4, which is a report of investigation (ROI) summarizing Applicant's interview that took place during the September 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 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 4 is inadmissible, and I have not considered the information in the ROI.

Findings of Fact

Applicant is 40 years old, married, and a high school graduate with some college credits.⁴ From August 1994 until January 2015, Applicant served on active duty in the U. S. Army. He was honorably discharged due to injuries he suffered while on active duty.⁵ From January 2015 until April 2015, he was unemployed, and since April 2015 he has had full-time employment with the defense contractor that is his clearance sponsor.⁶ The

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.).

⁴ Exhibit 3.

⁵ Exhibit 3.

⁶ Exhibit 3.

SOR alleged five collection accounts and two charge-offs totaling approximately \$14,119. The SOR also alleged a Chapter 7 bankruptcy in June of 1997. Applicant has admitted each of the alleged debts and the bankruptcy.⁷ I incorporate those admissions as findings of fact herein. In addition to Applicant's admissions, those debts are supported by credit reports accessed in June 2015 and April 2016.⁸

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.

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

⁷ Exhibits 1 and 2.

⁸ Exhibits 5 and 6.

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).

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.

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

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

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.

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). His answer to the SOR admitted that his financial problems were due to his inability to pay his debts due to a lack of funds.²¹ His principle indebtedness is an automobile loan that was charged off in the amount of \$10,641.²² Applicant's answer claims that he went into default due to being discharged from the U. S. Army for medical reasons and having to move off post. The record does show that Applicant was unemployed from the date of his discharge in January 2015 until taking a full-time job with his present employer in April 2015. Even were I to conclude that his discharge was a circumstance largely beyond his control, the record shows no evidence that he acted responsibly as to the automobile loan and the other debts. There is no evidence that he made any payments to creditors or made other efforts to resolve the debts. Mitigating conditions under AG ¶¶ 20(b), (c), and (d) do not apply.²³

The record creates doubts 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 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 – 1.g.:	Against Applicant
Subparagraph 1.h.:	For Applicant

²¹ Exhibit 2.

²² Exhibits 5 and 6.

²³ I find no relevant relationship between Applicant's current financial condition and the nearly 20 year-old Chapter 7 bankruptcy proceeding. Accordingly, I find for Applicant on that allegation.

Conclusion

In light of the record as a whole, it is clearly not consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas
Administrative Judge