



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 15-07443

Appearances

For Government: Charles Hale, Esq., Department Counsel

For Applicant: *Pro se*

04/27/2017

Decision

LEONARD, Michael H., 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 history of financial problems, which includes more than \$50,000 in back taxes, interest, and penalties owed to the IRS. 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 April 8, 2015. This document is commonly known as a security clearance application. Thereafter, on June 8, 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 his eligibility for access to classified information. The SOR is 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 July 5, 2016; his answers to the SOR allegations were mixed; and he requested a hearing before an administrative judge. The hearing took place as scheduled on December 7, 2016. The hearing transcript (Tr.) was received December 15, 2016. The record was kept open to allow Applicant to submit additional matters; he made a timely submission per e-mail on December 11, 2016; and those matters are admitted without objections as Exhibits O, P, and Q.

Findings of Fact

Applicant is a 56-year-old employee who is seeking to obtain or retain a security clearance.¹ His educational background includes a bachelor's degree in computer science. He is a software engineer. He is employed by a subcontractor to a federal contractor doing business in the defense industry. His first two marriages ended in divorce, and he married for the third time in 2012.

Applicant's recent employment history includes a six-month period of unemployment in 2013.² He was self-employed from March 2006 to June 2013, working as a 1099 contractor for a large company. He was out of work from January 2013 to June 2013, essentially the last six months of his self-employment. He resumed employment as a federal contractor in June 2013, when he relocated to his state of current residence. He attributes his financial problems to unemployment, because he was unable to pay self-employment tax to the IRS for tax years 2012 or 2013, and he withdrew money from a 401(k) account for living expenses. He also acknowledged that his tax problem stems from procrastination and that he was in denial, although he now realizes he needs to address his tax obligations in a timely manner.³

In his April 2015 security clearance application, Applicant disclosed several delinquent accounts and \$48,000 in back taxes owed to the IRS.⁴ The SOR alleges a history of financial problems consisting of the following: (1) six collection or charged-off consumer accounts for a total of about \$16,924; (2) approximately \$55,469 in back taxes owed to the IRS as evidenced by federal tax liens filed in October 2014 and November 2015; and (3) failure to timely file a federal individual income tax return for tax year 2013. The SOR allegations are established by Applicant's admissions, his hearing testimony, and the documentary evidence. Those matters are discussed in further detail below.

SOR ¶ 1.a: \$1,100 charged-off credit card account. This debt is unresolved. Applicant disputes the debt and he is currently being sued for collection.⁵ He did not provide documentation to substantiate the basis of the dispute.

¹ Tr. 5-6.

² Tr. 59-61.

³ Tr. 81.

⁴ Exhibit 1.

⁵ Tr. Tr. 55-59; Exhibit B.

SOR ¶ 1.b: \$81 collection account for a NSF check. This debt is resolved. In December 2016, the creditor agreed to delete the account from Applicant's credit report.⁶

SOR ¶ 1.c: \$1,287 charged-off credit card account. This debt is resolved. He settled the debt for \$592.50 in November 2016.⁷

SOR ¶ 1.d: \$715 collection account for a cell phone account. This debt is unresolved. Applicant disputes the debt, but he presented no documentation to substantiate the basis for the dispute.⁸

SOR ¶ 1.e: \$1,414 charged-off charge account. This debt is unresolved. Applicant entered into a repayment arrangement wherein he agreed to pay \$42.87 for 33 months in November 2016, and the first payment was pending.⁹

SOR ¶ 1.f: \$12,326 charged-off credit card account. This debt is unresolved.¹⁰ In November 2016, Applicant received a settlement offer to make \$361 monthly payments for 12 months, but he did not accept it. He planned to start repaying the debt beginning in January 2017.

SOR ¶¶ 1.g, 1.h, 1.i, and 1.j: failure to file federal income tax returns and failure to pay federal income taxes as required. These matters are discussed together because they are factually interrelated. The following findings, set forth by the relevant tax year, are based largely on IRS tax records provided by Applicant.¹¹

For tax year 2011 (SOR ¶ 1.i), the IRS filed a federal tax lien for \$2,248 against Applicant in October 2014.¹² The IRS made the tax assessment in November 2012. The IRS released the lien in March 2016.

For tax year 2012 (SOR ¶ 1.h), the IRS filed a federal tax lien for \$46,300 against Applicant in October 2014.¹³ Although he received an extension of time, he filed his return on February 2, 2014, which was after the due date. The IRS assessed a \$673 penalty for not pre-paying tax, a \$5,069 penalty for filing the return after the due date, a

⁶ Exhibit C.

⁷ Exhibit D.

⁸ Tr. 66-70.

⁹ Tr. 70-71; Exhibit E.

¹⁰ Tr. 71-75; Exhibit F.

¹¹ Exhibits A, H, I, J, K, L, N, O, P, and Q.

¹² Exhibits N and P.

¹³ Exhibits A, H, L, and Q.

\$2,065 penalty for late payment of tax, and charged \$1,040 interest for late payment in February 2014. After the lien was filed in October 2014, the IRS assessed a \$3,562 penalty for late payment of tax and charged \$1,160 interest for late payment in December 2014. Applicant made a number of payments in 2016, but seven payments of \$500 each were dishonored.¹⁴ An installment agreement was established in June 2016 for both tax years 2012 and 2013 with a monthly payment of \$2,000. The IRS revised the installment agreement reducing the monthly payment to \$1,000, beginning November 28, 2016. Applicant owed \$47,554 for tax year 2012, as of December 4, 2016.

For tax year 2013 (SOR ¶¶ 1.g and 1.j), the IRS filed a federal tax lien for \$6,921 against Applicant in November 2015.¹⁵ Although he received an extension of time, he filed his return on October 26, 2015, which was after the due date. The IRS assessed a \$47 penalty for not pre-paying tax, a \$1,125 penalty for filing tax return after the due date, a \$475 penalty for late payment of tax, and charged \$270 interest for late payment. As noted above, an installment agreement was established in June 2016 for both tax years 2012 and 2013 with a monthly payment of \$2,000. The IRS revised the installment agreement reducing the monthly payment to \$1,000, beginning November 28, 2016. Applicant owed \$7,907 for tax year 2013, as of December 4, 2016.

For tax year 2014, Applicant timely filed his return.¹⁶ A credit or refund of \$130 was transferred out and applied to tax year 2011. Likewise, for tax year 2015, he timely filed his return.¹⁷ A credit or refund of \$201 was transferred out and applied to tax year 2012.

Altogether, Applicant owes the IRS \$55,461 in back taxes, interest, and penalties for tax years 2012 and 2013. As noted above, his payment record has been uneven with seven dishonored payments in 2016. Four dishonored payments occurred after the installment agreement was established in June 2016.

Applicant's financial situation shows that he earns a relatively high income. For tax year 2012, he and his spouse had an adjusted gross income (AGI) of \$148,734; for 2013, the AGI was \$137,847; for 2014, the AGI was \$159,115; and for 2015, the AGI was \$171,386.¹⁸ For 2016, his gross earnings were \$149,600 as of November 27, 2016.¹⁹ He has about \$2,000 in his 401(k) account.²⁰

¹⁴ Exhibit L.

¹⁵ Exhibits A, I, and Q.

¹⁶ Exhibit J.

¹⁷ Exhibit K.

¹⁸ Exhibits L, I, J, and K, respectively.

¹⁹ Exhibit M.

²⁰ Exhibit G; Tr. 40-41.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.²¹

It is well-established law that no one has a right to a security clearance.²² 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.”²³ 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.²⁴ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁹

²¹ The 2017 AG are available at <http://ogc.osd.mil/doha>.

²² *Department of the 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).

²³ 484 U.S. at 531.

²⁴ Directive, ¶ 3.2.

²⁵ Directive, ¶ 3.2.

²⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁷ Directive, Enclosure 3, ¶ E3.1.14.

²⁸ Directive, Enclosure 3, ¶ E3.1.15.

²⁹ Directive, Enclosure 3, ¶ E3.1.15.

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.³⁰ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.³¹

Discussion

Under Guideline F for financial considerations, 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 an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .³²

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive 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 or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

AG ¶ 19(f) failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required;

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

³⁰ *Egan*, 484 U.S. at 531.

³¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

³² AG ¶ 18.

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The evidence here supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. The evidence in disqualification is quite strong. Applicant resolved only two of the six delinquent consumer accounts. The remaining four delinquent accounts total about \$15,555. He says he is about to start making monthly payments for two accounts. He disputes two accounts without supporting documentation.

In addition to the delinquent consumer accounts, Applicant's tax problem with the IRS is both serious and far from resolved. He owes more than \$50,000 for tax years 2012 and 2013. His tax problem with the IRS bears close examination and is a matter of serious concern to the federal government.³³ It suggests that he has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified or sensitive information. An applicant who has a history of not fulfilling their tax obligations may be said not to have demonstrated the high degree of judgment and reliability required for access to classified or sensitive information.

I considered Applicant's evidence of mitigation, reform, and rehabilitation. The four remaining delinquent consumer accounts are not a huge sum of money, and he should be able to resolve those debts relatively quickly in light of his income. I also considered his six-month period of unemployment during 2013, which was a circumstance largely beyond his control. I cannot give the unemployment great weight, however, because he has had full-time employment since June 2013 and earns a good income. Further, his tax problem with the IRS pre-dates his period of unemployment; namely, the \$2,248 federal tax lien for tax year 2011. This shows he was not in compliance with his tax obligations well before he was unemployed. He also provided documentation showing that he is current with filing his federal individual income tax returns through tax year 2015, and he is repaying the IRS via an installment agreement. In weighing this evidence, I considered both the timing and length of compliance. His track record of repayment to the IRS in 2016 was uneven as established by the multiple dishonored payments, which is a circumstance that militates against a favorable decision.

On balance, Applicant's favorable evidence is outweighed by the nature, extent, and seriousness of his tax problem, which is ongoing. His tax problem with the IRS does not amount to a *per se* rule against a favorable clearance decision. But

³³ The General Accountability Office (GAO) expressed serious concern over the relationship between tax delinquents and clearance holders in its July 28, 2014 report, *Security Clearances: Tax Debts Owed by DOD Employees and Contractors*, <http://www.gao.gov/assets/670/665052.pdf>.

considering the totality of facts and circumstances of this case, I am not persuaded that Applicant is an acceptable national security risk.

Following *Egan* and the clearly consistent standard, I have doubts or concerns 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 considered the whole-person concept. Accordingly, I conclude that he 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.c:	For Applicant
Subparagraphs 1.c-1.j:	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.

Michael H. Leonard
Administrative Judge