



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03951

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

01/18/2018

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for access to classified information. He has a history of financial problems that is ongoing, and he has done little to address the various delinquent accounts. 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 January 3, 2013.¹ This document is commonly known as a security clearance application. Thereafter, on March 30, 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

¹ Exhibit 1.

information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guidelines known as Guideline F for financial considerations based on a history of financial problems, Guideline K for handling protected information based on several incidents of mishandling proprietary information in the workplace, and Guideline E for personal conduct based on two allegations of falsification of his 2013 security clearance application.

Applicant answered the SOR on April 27, 2016. His answers were mixed, with admissions and denials. He also requested a hearing before an administrative judge.

The case was assigned to me on April 7, 2017. The hearing took place as scheduled on April 27, 2017. Applicant appeared without counsel. Department Counsel Exhibits 1 and 4-8 were admitted while Exhibits 2 and 3 were not admitted.² Applicant offered no documentary exhibits. No witnesses were called other than Applicant. The hearing transcript (Tr.) was received on May 4, 2017.

Procedural Matters

The SOR was amended at hearing, without objections, to correct minor drafting errors in the falsification allegations in SOR ¶¶ 3.a and 3.b.³

Findings of Fact

Applicant is a 40-year-old employee who is seeking to retain a security clearance previously granted to him. His educational background includes a bachelor's degree in computer engineering. He has worked as a software engineer for major defense contractors since 1998. He has been employed by his current company since 2004. His employment history does not include military service. He married in 2001, his spouse told him she wanted a divorce in 2009, she moved out of the marital home with their three sons in April 2010, he has had custody of his sons since July 2011, and the divorce occurred in May 2012. His middle son returned to living with his mother in 2016.

In his January 2013 security clearance application, Applicant did not disclose, in the last seven years, that he had received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy in response to a question seeking that information. Likewise, he did not disclose, in the last seven years, the existence of any delinquent routine financial accounts in response to a question seeking that information. About a month later in February 2013, Applicant self-reported to his employer's security office that his personal residence (with first and second mortgage loans) went into foreclosure due to financial problems related to his divorce that occurred in May 2012.⁴

² Tr. 21-26.

³ Tr. 15-17.

⁴ Exhibit 2.

Under Guideline F for financial considerations, the SOR alleged seven delinquent debts ranging in amounts from \$28 to \$26,910 for a total of about \$62,231. The largest debt is the \$26,910 charged-off second mortgage loan account. There are two charged-off credit card accounts for a total of \$29,589, and there are four collection accounts for a total of \$5,732. In his answer to the SOR, Applicant admitted a \$406 collection account, the two charged-off credit card accounts, and the charged-off second mortgage loan. He denied and disputed the remaining three collection accounts. And he explained in his answer and during the hearing that his marital separation and divorce blindsided him, the emotional strain resulted in a lack of focus on financial matters, and he did not handle his finances well.

All seven of the delinquent accounts are established by information in credit reports from 2013, 2015, 2016, and 2017.⁵ Applicant did not present documentation to establish that any of the seven delinquent accounts were paid, in a payment arrangement, settled or compromised, in dispute, cancelled, or forgiven. He admitted making no effort to resolve the seven delinquent accounts since receiving the SOR in March 2016.⁶ He attributed his lack of effort to impatience in dealing with the collection process.⁷ He also stated that although he had received written offers to settle delinquent accounts, he did not pursue any due to the potential effect on his taxable income.⁸

Overall, Applicant attributed his financial problems to his marital separation and divorce during 2010-2012.⁹ His current financial situation includes about \$13,000 in cash savings and an unknown balance in a 401(k) retirement account.¹⁰ He has not sought or obtained financial counseling or advice.¹¹ The most recent credit report from March 2017 includes two medical collection accounts for \$168 and \$237, which are not alleged in the SOR and which Applicant acknowledges.¹²

Under Guideline K for handling protected information, the SOR alleged five incidents in a 12-month period during 2012-2013 when Applicant was cited for violating company security rules and regulations by leaving proprietary or export-controlled documents or both unsecured in his workspace in an open area. In his answer to the SOR, Applicant admitted three of the five incidents. There is no documentary evidence to establish the incidents. At the hearing, he explained that the incidents occurred

⁵ Exhibits 4, 5, 6, and 7.

⁶ Tr. 48.

⁷ Tr. 53.

⁸ Tr. 64-66.

⁹ Tr. 37-42.

¹⁰ Tr. 69-71.

¹¹ Tr. 71-72.

¹² Exhibit 7; Tr. 71.

shortly after his divorce in May 2012, and he recalled four of the five incidents alleged.¹³ He acknowledged that he did not take the initial citation seriously enough, and was then cited again.¹⁴ The common factor in the incidents was leaving protected information unsecured in his workspace along with bad or sloppy habits while working in an open area.¹⁵ He changed his habits by working exclusively in closed areas, which has prevented the recurrence of additional incidents.¹⁶

Under Guideline E for personal conduct, the SOR alleged that Applicant deliberately falsified his January 2013 security clearance application by failing to disclose three security violations that occurred in 2012, and by failing to disclose several delinquent financial accounts. Applicant denies both allegations. He explained, in his answer and during the hearing, that he did not remember or recall the 2012 violations when completing his January 2013 security clearance application. Concerning the financial matters, he explained that although he knew he had some delinquent debts, he did not believe they were reportable because they were not more than 120 days delinquent. If the debts were reportable, then he made a mistake in not reporting them.

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, 2017.¹⁷

It is well-established law that no one has a right to a security clearance.¹⁸ 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.”¹⁹ 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. In *Egan*, the Supreme Court stated that

¹³ Tr. 57-58.

¹⁴ Tr. 59.

¹⁵ Exhibits 2-6.

¹⁶ Tr. 61-62.

¹⁷ The 2017 AG are available at <http://ogc.osd.mil/doha>.

¹⁸ *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).

¹⁹ 484 U.S. at 531.

the burden of proof is less than a preponderance of evidence.²⁰ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²¹

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.²² An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁴ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁷

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. . .²⁸

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,

²⁰ 484 U.S. at 531.

²¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²² Directive, ¶ 3.2.

²³ Directive, ¶ 3.2.

²⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁵ Directive, Enclosure 3, ¶ E3.1.14.

²⁶ Directive, Enclosure 3, ¶ E3.1.15.

²⁷ Directive, Enclosure 3, ¶ E3.1.15.

²⁸ AG ¶ 18.

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 as most pertinent:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(b) unwillingness to satisfy debts regardless of ability to do so;

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

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;

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(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions taken to resolve the issue.

The evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. His history of financial problems is long-standing and goes back to the period of his marital separation and divorce during 2010-2012. It was evident in listening to and observing Applicant that he went through a difficult period after his then wife decided to leave the household. This is the type of life event that falls squarely within the mitigating condition at AG ¶ 20(b).

But what is missing here is evidence that Applicant acted responsibly under the circumstances. He did not act responsibly because he largely put his head in the sand and ignored his financial problems. Likewise, he made no effort, much less a good-faith effort, to resolve the seven delinquent debts after receiving the SOR in March 2016. His lack of supporting documentation bears this point out. In addition, although he disputes three of the seven delinquent debts, he did not offer any documented proof in support of his disputes or provide evidence of actions taken to resolve the issues. The seven delinquent debts are unresolved and ongoing. And he has done little to help himself, despite that he has a long and steady employment history working as a software engineer for major defense contractors. These facts and circumstances do not demonstrate the high degree of judgment, trustworthiness, and reliability required for access to classified or sensitive information.

Under Guideline K for mishandling protected information,²⁹ I am not unduly concerned about the incidents of Applicant mishandling proprietary or export-controlled information in his workspace. The incidents took place several years ago and have not recurred. He has since changed his habits and no longer works in open areas, he works in closed areas, and his change of work habits appears to have remedied the problem.

Under Guideline E for personal conduct, the concern is that “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special concern is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.”³⁰ A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

Concerning the two falsification allegations, I am not persuaded that Applicant’s failure to disclose the relevant information was deliberate. He explained that he did not recall the three security violations or incidents from 2012 when he completed his 2013 security clearance application. He also explained why he omitted delinquent financial accounts from his security clearance application. I found both explanations credible and worthy of belief. Further, his willingness to self-report the foreclosure in February 2013, one month after completing the security clearance application, persuades me that he was not engaged in an effort to omit, hide, or conceal his financial problems. His self-report also put the Defense Department on notice that he was experiencing financial problems. Given his self-report of a serious financial problem such as a home foreclosure, it is not reasonable to conclude that his failure to disclose the other delinquent accounts in his security clearance application constituted falsification.³¹

Applicant’s long-standing history of financial problems creates serious 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*. 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.

²⁹ AG ¶¶ 33, 34, and 35 (setting forth the concern as well as the disqualifying and mitigating conditions).

³⁰ AG ¶ 15.

³¹ See ISCR Case No. 15-06990 (App. Bd. Jan. 11, 2018) (held that the Government failed to establish by substantial evidence that Applicant deliberately failed to disclose delinquent debts in his security clearance application).

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.g:	Against Applicant
Paragraph 2, Guideline K:	For Applicant
Subparagraphs 2.a-2.e:	For Applicant
Paragraph 3, Guideline E:	For Applicant
Subparagraphs 3.a-3.b:	For Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge