



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



In the matter of:)
)
 -----) ISCR Case No. 16-03267
)
 Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

10/20/2017

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. Applicant failed to mitigate security concerns raised by his problematic financial history and his personal conduct. 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 September 10, 2015. This document is commonly known as a security clearance application. On December 14, 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 his eligibility for access to classified information.¹ It detailed the factual reasons for

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

the action under the security guidelines known as Guideline F for financial considerations and Guideline E for personal conduct. Applicant answered the SOR on January 20, 2017 and requested a decision based on the written record without a hearing.

On February 10, 2017, Department Counsel submitted a file of relevant material (FORM).² The FORM was mailed to Applicant on February 13, 2017. 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 February 22, 2017.³ Applicant did not respond to the FORM. The case was assigned to me on October 1, 2017.

Procedural Matters

Included in the FORM were seven items of evidence, which are marked as Government Exhibits (GE) 1 through 6 and are admitted into evidence without objection.⁴

Findings of Fact

Applicant is 51 years old and a high school graduate who served in the U.S. Army on active duty from 1984 to 1990, when he was honorably discharged. He is divorced with two adult children. Since September 2015, he has worked for a defense contractor.⁵

Under Guideline F, the SOR alleged that Applicant has 28 delinquent debts, which include a judgment, a vehicle repossession, and various consumer, utility, and medical accounts that have been charged off or placed for collection totaling \$25,079.⁶ Applicant admits these allegations but has not provided documentary evidence that any of those debts have been or are being paid.⁷

addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on June 8, 2017, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2016). In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017. My decision and formal findings under the revised Guidelines F and E would not be different under the 2006 Guidelines.

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 February 13, 2017; and Applicant's receipt is dated February 22, 2017. 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 7 are marked as Exhibits 1 through 6.

⁵ GE 1.

⁶ SOR ¶¶ 1.a-bb.

⁷ Answer ¶¶ 1.a-bb.

Under Guideline E, the SOR alleged that Applicant: (1) In 2006 was arrested and convicted of corruption of minors and sentenced to 3 to 14 months in prison; (2) in 2013 was arrested and convicted of harassment/subject other to physical contact; (3) in 2014 was arrested and convicted of numerous traffic violations; and (4) in 2015 was arrested for fraud and various other offenses involving a motor vehicle.⁸ Applicant admits these allegations but claims that his vehicle was stolen by a family member when he was arrested in 2015.⁹

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁰ 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.”¹¹ 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.¹² An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁴ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁷

⁸ SOR ¶¶ 2.a-d.

⁹ Answer ¶¶ 2.a-d.

¹⁰ *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).

¹¹ 484 U.S. at 531.

¹² Directive, ¶ 3.2.

¹³ Directive, ¶ 3.2.

¹⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁵ Directive, ¶ E3.1.14.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁸ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁹

Discussion

Guideline F - Financial Considerations

Under Guideline F for financial considerations,²⁰ 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 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.²¹

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 to satisfy debts;

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

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

AG ¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

¹⁸ *Egan*, 484 U.S. at 531.

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

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

²¹ AG ¶ 18.

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; and,

AG ¶ 20(d) the individual initiated and is adhering to 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 as alleged.²² This raises security concerns under AG ¶¶ 19(a), (b), and (c).

The next inquiry is whether any potential mitigating conditions apply. After a careful review of the entire record, I find that none of the potential mitigating conditions cited above apply in this case.

Guideline E - Personal Conduct

AG ¶ 15 sets out the security concern about personal conduct:

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 interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.²³

The Government contends that AG ¶¶ 16(c) and (d) set forth below apply to the conduct alleged under Guideline E and admitted by Applicant:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and,

²² Facts admitted by an applicant in an answer to a SOR require no further proof by the Government. ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995) ("any admissions [applicant] made to the SOR allegations . . . relieve Department Counsel of its burden of proof"); ISCR Case No. 94-0569 at 4 and n.1 (App. Bd. Mar. 30, 1995) ("[a]n applicant's admissions, whether testimonial or written, can provide a legal basis for an Administrative Judge's findings").

²³ AG ¶¶ 15, 16, and 17 (setting forth the concern and the disqualifying and mitigating conditions).

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources....

I concur with the Government's contention that AG ¶¶ 16(c) and (d) apply and raise a security concern. Applicant's pattern of criminal misconduct is just what is contemplated under AG ¶¶ 16(c) and (d). That pattern evidences questionable judgment, unreliability, and dishonesty.

The next inquiry is whether any potentially mitigating conditions apply. After a careful review of the entire record, I find that none of the mitigating conditions under Guideline E apply in this case.

The record evidence on Applicant's financial condition and his personal conduct raise 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*. I also gave due consideration to the whole-person concept.²⁴ Accordingly, I conclude that Applicant 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

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

²⁴ AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6).

Subparagraphs 1.a-1.bb:	Against Applicant
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Paragraph 2, Guideline E	Against Applicant
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Subparagraphs 2.a-d:	Against Applicant
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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