



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



In the matter of:)
)
-----) ISCR Case No. 16-03230
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

03/01/2018

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 the security concern raised by his problematic financial history. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions (SF 86 format) on May 8, 2017. This document is commonly known as a security clearance application. On July 21, 2017, 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 the action under the security guideline

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),

known as Guideline F for financial considerations. Applicant answered the SOR on August 15, 2017, and requested a decision based on the written record without a hearing.

On October 12, 2017, Department Counsel submitted a file of relevant material (FORM).² The FORM was mailed to Applicant on October 18, 2017. He was given 30 days to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant received the FORM on October 24, 2017. Applicant did not respond to the FORM. The case was assigned to me on February 22, 2018.

Procedural Matters

Included in the FORM were six items of evidence, which are marked as Government Exhibits (GE) 1 through 6. GE 1 through 3 and GE 5 and 6 are admitted into evidence without objection. GE 4 is a report of investigation (ROI) summarizing Applicant's interviews that took place in May and June 2014 during the 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 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, GE 4 is inadmissible, and I have not considered it.

Findings of Fact

Applicant is 37 years old and is a high school graduate. He is divorced with two daughters ages 8 and 11. From December 2002 until February 2011, he was on active duty in the U.S. Air Force. Applicant received an Honorable Discharge. Since April 2017, he has worked for a defense contractor.⁴

Under Guideline F, the SOR alleges that Applicant has eight delinquent debts totaling \$29,822.⁵ Applicant admitted each debt but claims that they have been settled or

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).

² The file of relevant material consists of Department Counsel's written brief and supporting documentation, 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'anani 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'anani raises a number of pertinent questions about using an unauthenticated ROI in a non-hearing case with a *pro se* applicant.).

⁴ GE 3.

⁵ GE 1.

are current. He also attributed his delinquencies to his divorce and one account that he said was due to helping his mother with expenses caused by his father's death in March 2015.⁶ Applicant produced no documentation establishing that the SOR debts are current or have been settled. Those debts persist to this day.⁷

Law and Policies

It is well-established law that no one has a right to a security clearance.⁸ 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."⁹ 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.¹⁰ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹¹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹² The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹³ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁴ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁵

⁶ GE 2.

⁷ GE 5 and 6.

⁸ *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).

⁹ 484 U.S. at 531

¹⁰ Directive, ¶ 3.2.

¹¹ Directive, ¶ 3.2.

¹² ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹³ Directive, Enclosure 3, ¶ E3.1.14.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁶ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁷

Discussion

Under Guideline F for financial considerations,¹⁸ 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....¹⁹

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 conditions:

AG ¶ 19(a) inability to satisfy debts; and

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

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

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;

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,

¹⁶ *Egan*, 484 U.S. at 531.

¹⁷ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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

¹⁹ AG ¶ 18.

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, and his financial problems continue to this day. Security concerns are raised under AG ¶¶ 19(a) and (c). The next inquiry is whether any mitigating conditions apply.

Applicant's debts remain currently delinquent. And they are not infrequent. Therefore, AG ¶ 20(a) does not apply.

Applicant attributes his delinquencies to his divorce and one account to his father's death in March 2015. Crediting those explanations triggers the first prong of AG ¶ 20(b), which applies to circumstances largely beyond Applicant's control. That does not, however, end the analysis. Applicant must also establish that he acted responsibly under those adverse circumstances. Applicant claims that the SOR delinquencies are either current or have been settled. Unfortunately, he has not provided any documentation supporting his claims. The Appeal Board has previously noted that it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of individual debts.²⁰ AG ¶ 20(b) does not apply. For the same reason, AG ¶ 20(d) does not apply.

The record raises 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.²¹ Accordingly, I conclude that Applicant failed to 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

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
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Subparagraphs 1.a-1.h:	Against Applicant
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²⁰ See, e.g., ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008); ISCR Case No. 06-17520 at 2 (App. Bd. Sep. 20, 2007).

²¹ AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6).

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