



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



In the matter of:)
)
-----) ISCR Case No. 16-03691
)
Applicant for Security Clearance)

Appearances

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

11/02/2017

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. Applicant mitigated security concerns raised by his problematic financial history. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on June 12, 2015. This document is commonly known as a security clearance application. On December 30, 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 it was clearly consistent with the national interest to grant him eligibility for access to classified information.¹ It detailed the factual reasons for the

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),

action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on February 2, 2017, and requested a decision based on the written record without a hearing.

On February 27, 2017, Department Counsel submitted a file of relevant material (FORM).² The FORM was mailed to Applicant on March 6, 2017, and he received it on March 9, 2017. He was given 30 days to file objections and submit material to refute, extenuate, or mitigate the Government's evidence.³ Applicant responded to the FORM on April 7, 2017, and submitted documents that I have marked as Applicant's Exhibit A (AE A) (pages 1 through 14). They are admitted into evidence without objection. The case was assigned to me on October 1, 2017.

Procedural Matters

Included in the FORM were five items of evidence, which are marked as Government Exhibits (GE) 1 through 4.⁴ Exhibits 1, 3, and 4 are admitted into evidence. Exhibit 2 is a report of investigation (ROI) summarizing Applicant's interview that took place during the August 2015 background investigation. The ROI is not authenticated, as required under ¶ E3.1.20 of the Directive.⁵ 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. The footnote is prominently prefaced with a bolded, upper-case notice to Applicant and flagging for Applicant the importance of the footnote, which then explains the concepts of authentication and waiver. In a case such as this, where Applicant has responded to the FORM, it is fair to conclude that Applicant read the footnote, understood it, and chose not to object to the ROI. The ROI (GE 2) is, therefore, admitted into evidence.

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 are made under the revised Guideline F.

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 March 6, 2017, and Applicant's receipt is dated March 9, 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 5 are marked as GE 1 through 4.

⁵ 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.).

Findings of Fact

Applicant is 38 years old, married with two children, ages 5 and 16. He is a high school graduate with some college credits. Since December 2015, he has been employed by a defense contractor.⁶

The SOR alleged 11 delinquent debts totaling \$37,234. Applicant has admitted seven of those debts but denied four of them. His answer to the SOR and his response to the FORM explain the status of each debt and how he is addressing them.

Applicant has enrolled four SOR debts in a debt consolidation program.⁷ Those debts are SOR ¶¶ 1.a, 1.c, 1.d, and 1.j. Applicant documented that: (1) those four debts were enrolled; (2) that he has opened a bank account dedicated solely to making automatic monthly payments on those debts; and (3) he has a track record of those payments being made.⁸

Applicant documented that he is current on payment plans for the debts alleged in SOR ¶¶ 1.b and 1.g.⁹ He also documented that he has paid off the debts alleged in SOR ¶¶ 1.e. and 1.f.¹⁰

Applicant established that the debt alleged in SOR ¶ 1.i is a duplicate of the debt alleged in SOR ¶ b., which is already under a payment plan.¹¹ Finally, Applicant documented that he paid off the debt alleged in SOR ¶ 1.k.¹²

In sum, Applicant has paid off or is paying off all of the non-duplicative debts alleged in the SOR.

⁶ GE 1; GE 2.

⁷ That program includes credit counseling. Answer, pp. 7-11.

⁸ Answer ¶¶ 1.a, 1.c, 1.d, 1.j and pp. 14, 22, and 28; AE A, pp. 7-8. Applicant contends that SOR ¶ 1.a is a duplicate of SOR ¶ 1.h. The record supports his contention. GE 3 shows the debt owed to the original creditor in the same amount as is later owed to the collection agent. GE 4. The amount alleged in SOR ¶ 1.h is the high credit, but there is no balance due. GE 4.

⁹ Answer ¶¶ 1.b and 1.g and pp. 23-27; AE A, p. 5.

¹⁰ Answer ¶¶ 1.e and 1.f and pp. 28, 23-27, 38; AE A, p. 5.

¹¹ Answer ¶ 1.i. GE 3 and 4.

¹² Answer ¶ 1.k and p. 41.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹³ 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.”¹⁴ 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. An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁹

In *Egan*, the Supreme Court stated that 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

¹³ *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).

¹⁴ 484 U.S. at 531.

¹⁵ Directive, ¶ 3.2.

¹⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁷ Directive, ¶ E3.1.14.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ *Egan*, 484 U.S. at 531.

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

Discussion

Guideline F - Financial Considerations

Under Guideline F for financial considerations,²² 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.²³

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(c) a history of not meeting financial obligations;

AG ¶ 20(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and,

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

During the security clearance process, evidence was developed that showed Applicant had a problematic financial history. That history raised security concerns under AG ¶¶ 19(a) and (c). The next inquiry is whether any potentially mitigating conditions apply.

In his responses to the SOR and the FORM, Applicant demonstrated that he has paid or is in the process of paying his SOR debts. AG ¶¶ 20(c) and (d) apply.

²² AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²³ AG ¶ 18.

The evidence of Applicant's current financial condition does not raise doubts 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 gave due consideration to the whole-person concept.²⁴ Accordingly, I conclude that Applicant has 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.²⁵

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: For Applicant

Subparagraphs 1.a-1.k: For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas
Administrative Judge

²⁴ AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6).