



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



In the matter of:)
)
-----) ISCR Case No. 17-01051
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

01/02/2018

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 completed and submitted a Questionnaire for National Security Positions (SF 86 format) on May 8, 2016. This document is commonly known as a security clearance application. On June 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

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),

the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on July 8, 2017, and requested a decision based on the written record without a hearing.

On August 15, 2017, Department Counsel submitted a file of relevant material (FORM).² The FORM was mailed to Applicant August 17, 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 August 31, 2017. He did not respond to the FORM. The case was assigned to me on December 7, 2017.

Procedural Matters

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

Findings of Fact

Applicant is 37 years old, never married and has two children (a son 9 and a daughter 14). He is a high school graduate with post-high-school technical training from April 2007 to April 2009. Since April 2016, he has worked for a defense contractor.³

The SOR alleges seven delinquent student loans totaling about \$38,000.⁴ Applicant admits those allegations but claims that he was defrauded by the institute where he received his technical training. He claims, in addition, that he is in the process of having the loans discharged, and failing that he will have the loans consolidated and resume making payments.⁵ The credit report indicates that the loans became delinquent between October 2013 and December 2014.⁶

Law and Policies

It is well-established law that no one has a right to a security clearance.⁷ As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard

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 that are identified as evidentiary exhibits in this decision.

³ GE 3.

⁴ GE 1.

⁵ GE 2.

⁶ GE 4.

⁷ *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).

indicates that security clearance determinations should err, if they must, on the side of denials.”⁸ 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.⁹ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁴

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁵ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁶

Discussion

Under Guideline F for financial considerations,¹⁷ 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:

⁸ 484 U.S. at 531

⁹ Directive, ¶ 3.2.

¹⁰ Directive, ¶ 3.2.

¹¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹² Directive, Enclosure 3, ¶ E3.1.14.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ *Egan*, 484 U.S. at 531.

¹⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁷ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

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 information¹⁸

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;

AG ¶ 19(b) unwillingness to satisfy debts regardless of the ability to do so; 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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.

The evidence supports a conclusion that Applicant has had a problematic financial history with respect to his student loans, and those financial problems continue to this

¹⁸ AG ¶ 18.

day. Security concerns are raised under AG ¶¶ 19(a), (b), and (c). The next inquiry is whether any mitigating conditions apply.

Although the student loans became delinquent three to four years ago, they remain in default and unresolved to this day. AG ¶ 20(a) does not apply.

Applicant claims that he was the victim of fraud perpetrated by the school where he received technical training from 2007 to 2009. Although he produced no evidence to support that claim, for purposes of discussion here, I will assume that he was such a victim, which would be a circumstance largely beyond his control, thus triggering the application of AG ¶ 20(b). That, however, does not end the inquiry.

Applicant needs to establish that he acted responsibly under those circumstances. Applicant does not specify when the fraud was committed, but it is reasonable to assume that his discovery of the fraud prompted him to stop making payments in October 2013 and December 2014. Since then, however, Applicant has not produced any evidence of his attempts to have the loans discharged or that he had them consolidated and resumed payments. In fact, beyond his claim of fraud and his hope to have the loans discharged or consolidated, the record is barren of any evidence of responsible conduct by Applicant. AG ¶ 20(b) does not apply. Nor do AG 20 ¶¶(c) and (d) 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.¹⁹ 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
Subparagraphs 1.a-1.g:	Against Applicant

¹⁹ 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