



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



In the matter of:)
)
-----) ISCR Case No. 17-01332
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

11/30/2017

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to revoke 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 January 11, 2016. This document is commonly known as a security clearance application. On May 23, 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 June 9, 2017, and requested a decision based on the written record without a hearing.

On July 14, 2017 Department Counsel submitted a file of relevant material (FORM).² The FORM was mailed to Applicant July 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 July 25, 2017.³ Applicant did not respond to the FORM. The case was assigned to me on November 27, 2017.

Procedural Matters

Included in the FORM were five items of evidence, which are marked as Government Exhibits (GE) 1 through 4.⁴ GE 1, 3, and 4 are admitted into evidence without objection. GE 2 is a report of investigation (ROI) summarizing Applicant's interview that took place during the August 2016 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. 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, Exhibit 2 is inadmissible, and I have not considered the information in the ROI.

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. My decision and formal findings under the revised Guideline F would not be different under the 2006 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 July 18, 2017, and Applicant's receipt is dated July 25, 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 Exhibits 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 24 years old, a high school graduate, has never married, and has no children. Since September 2015 he has worked for a defense contractor.⁶

The SOR alleges eight delinquent debts totaling about \$12,866.⁷ The delinquencies go back to about 2014 and 2015.⁸ Applicant admits these debts but claims that one collection account and the three medical debts have been paid, that the other debts either will be paid or are subject to a payment arrangement.⁹ With his answer, Applicant has provided documentation showing the payment of SOR ¶¶ 1.e through 1.h. He has not provided any documentation establishing the existence or status of any payments or payment arrangements for the remaining debts.

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

⁶ GE 1.

⁷ SOR ¶¶ 1.a-1.h.

⁸ GE 3, pp. 5-7; GE 4.

⁹ Answer ¶¶ 1.a-1.h.

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).

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

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

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 conditions:

AG ¶ 19(a) inability to satisfy debts;

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

¹⁵ Directive, Enclosure 3, ¶ E3.1.14.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

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 ¶ 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 going back to about 2014. Security concerns are raised under AG ¶¶ 19(a), (b), and (c). The next inquiry is whether any mitigating conditions apply.

Because Applicant has provided documentation that he has paid SOR ¶¶ 1.e through 1.h, those debts have been mitigated under AG ¶ 20(d), and I will find in favor of Applicant on those debts.

Although Applicant's financial woes appear to date back to about 2014, they persist to this day. AG ¶ 20(a) does not apply.

There is nothing in the record suggesting that Applicant's delinquent indebtedness was caused by circumstances largely beyond his control. Therefore, AG ¶ 20(b) does not apply. Similarly, there is nothing in the record showing that Applicant received or is receiving financial counseling. Therefore, AG ¶ 20(c) does not apply.

For SOR ¶¶ 1.a through 1.d, Applicant stated that they will be paid or are under payment arrangements. Unfortunately, he provided no documentation that the debts have been resolved by payment or by a payment plan. The Board has previously noted that it is reasonable for a Judge to expect applicants to present documentation about the

satisfaction of individual debts.²² Applicant provided nothing upon which to make a finding that AG ¶ 20(d) applies to the remaining SOR debts.

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.²³ 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.d:	Against Applicant
Subparagraphs 1.e-1.h	For Applicant

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

²² 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).

²³ AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6).