



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



In the matter of:)
)
-----) ISCR Case No. 17-01650
)
Applicant for Security Clearance)

Appearances

For Government: Brittany Muetzel, Esq., Department Counsel
For Applicant: *Pro se*

06/07/2018

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. Applicant mitigated the security concern raised by his problematic financial history. He failed, however, to mitigate the security concern raised by his criminal 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 October 19, 2015. This document is commonly known as a security clearance application. On November 9, 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

the action under the security guidelines known as Guideline J for criminal conduct and Guideline F for financial considerations. Applicant answered the SOR on July 15, 2016, and requested a decision based on the written record without a hearing.

On January 30, 2018, Department Counsel submitted a file of relevant material (FORM).² The FORM was mailed to Applicant on the January 31, 2018. 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 March 27, 2018. He did not respond to the FORM. The case was assigned to me on June 4, 2018.

Procedural Matters

Included in the FORM were nine items of evidence, which are marked as Government Exhibits (GE) 1 through 7 and are admitted into evidence without objection.³

Findings of Fact

Applicant is 29 years old, a high school graduate who served in the U. S. Navy on active duty from August 2008 until August 2013. He is now in the inactive Naval Reserve. Applicant has never been married and has a son (age 4) who lives with him. Since September 2015, he has been employed by a defense contractor.⁴

Under Guideline J, the SOR alleged that in October 2015 Applicant was cited for driving with expired license plates, and that he failed to appear for his court date, causing the issuance of an arrest warrant, which is still active. The SOR alleged that Applicant was cited in January 2016 for interfering with a police officer, and that he failed to appear for his court date, causing the issuance of an arrest warrant. He was convicted of this charge. Finally, the SOR alleged that in February 2016 Applicant was cited for failure to register a motor vehicle and driving on a suspended license, and that he failed to appear for his court date, causing the issuance of an arrest warrant, which is still active.⁵ Applicant admitted those allegations.⁶

addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on June 8, 2017, apply here.

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 first item is the SOR, and the second item is Applicant's Answer. They are the pleadings in this case and, therefore, are not marked as exhibits.

⁴ GE1.

⁵ SOR ¶¶ 1.a-c.

⁶ Answer ¶¶ 1.a-c.

Under Guideline F, the SOR alleges six delinquent debts totaling \$20,776.⁷ Applicant denies the largest debt, a judgment for \$16,204, but admits the remainder of the debts.⁸

In his background interview, Applicant explained that the \$16,204 debt arose from his 2013 purchase of an automobile. He drove the car for about a year, when the power steering went out. The National Transportation Safety Board at the time had already started an investigation of the recall for this car. Because the car could not be driven, Applicant did a voluntary repossession and returned the car to the dealer. The dealer sold the car, leaving a \$6,000 deficiency. Applicant tried to work with the dealer to forgive the deficiency due to the recall. At first the dealer said it would cover the deficiency, but shortly thereafter the dealer changed its mind. So, Applicant made arrangements with the dealer to have bi-monthly payments withheld from his paycheck beginning in August 2016. The investigator in his report stated that the payments were noted in Applicant's leave and earnings statement (the report suggests that the investigator had that statement during the interview). The debt was paid off in March 2017.⁹

The debt is still shown as \$8,468 past due on the January 2018 credit bureau report.¹⁰ The record also shows, however, a declining balance and a date of last payment in March 2017.¹¹ This is consistent with Applicant's subject interview.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹² 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."¹³ 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.

⁷ SOR ¶¶ 2.a-f.

⁸ Answer ¶¶ 2a-f.

⁹ GE 2, p. 2 (subject interview verified by Applicant).

¹⁰ GE 7, Trade Line 3.

¹¹ The January 2016 report shows a balance of \$14,377. GE 5. The February 2017 report shows a balance of \$10,150. GE 6. The January 2018 shows a balance of \$8,468 and a date of last payment in March 2017. GE 7.

¹² *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).

¹³ 484 U.S. at 531

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁴ 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

Discussion

Guideline J, Criminal Conduct

The criminal conduct security concern is detailed in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

I have considered the following disqualifying conditions under AG ¶ 31:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

¹⁴ Directive, ¶ 3.2.

¹⁵ Directive, ¶ 3.2.

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

¹⁷ Directive, Enclosure 3, ¶ 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).

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct

Facts admitted by an applicant in an answer to a SOR require no further proof by the Government.²² Applicant's admission of his citations in 2015 and 2016, his repeated failures to appear for court, and the conviction of one charge trigger AG ¶ 31(b). The question is whether Applicant has mitigated the security concern raised by his criminal conduct.

Under AG ¶ 32, the following mitigating condition is potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant's most recent citations were just over two years ago, not much of a lapse of time. Moreover, his consistent failure to appear for court dates presents a troubling pattern of ignoring laws and court orders. Although the infractions were minor, many of the rules and regulations governing the handling and protection of classified information might be deemed "minor," but they nonetheless must be followed. I cannot find that the citations occurred so long ago that they are unlikely to recur, and I find that those infractions do cast doubt on Applicant's reliability. AG ¶ 32(a) does not apply.

Guideline F, Financial Considerations

Under Guideline F for financial considerations,²³ 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 information²⁴

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

²⁴ AG ¶ 18.

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; and

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

The lion's share of the indebtedness is the deficiency from the repossession sale of the recalled car. That debt is shown as past due as of January 2018. Thus, concerns are triggered under AG ¶¶ 19(a), (b), and (c). The next inquiry is whether any mitigating conditions apply.

The failure of the power steering on Applicant's car after only about one year of driving is a condition largely beyond Applicant's control. Applicant attempted to have the dealer forgive the deficiency, but he was unsuccessful. Therefore, he set up an installment plan to retire the debt by March 2017. I am satisfied that the verified subject interview, the declining balance of this debt, and the date of last payment establish that Applicant paid this indebtedness. AG ¶¶ 20(a), (b), and (d) apply.²⁵

²⁵ Even though this debt appears on Applicant's January 2018 credit bureau report, it is well known that such reports are not always a timely reflection of a payment made just over a year ago. Applicant has

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.²⁶ 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 his 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 J:	Against Applicant
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline F:	For Applicant
Subparagraphs 2.a-2.f:	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

admitted five unresolved debts totaling \$4,572. I find that this nominal amount does not raise a security concern.

²⁶ AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6).

