



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02566

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

10/11/2018

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. He has a long-standing history of financial problems or difficulties going back to a 2006 Chapter 7 bankruptcy case. He intends to address his current financial problems—about \$28,000 in delinquent debt—through another Chapter 7 bankruptcy case. Although he has had periods of unemployment, he did not present sufficient evidence to mitigate his financial problems, which are ongoing and unresolved. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, on April 28, 2016.¹ This document is commonly known as a security clearance application. Thereafter, on August 10, 2017, after reviewing the application and the information gathered during a background investigation, the Department of Defense

¹ Exhibit 1.

Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on September 13, 2017; his answers were mixed; and he requested a hearing before an administrative judge.

The case was assigned to me on October 20, 2017. The hearing took place as scheduled on April 10, 2018. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-6. Applicant offered documentary exhibits, which were admitted as Exhibits A-D. No witnesses were called other than Applicant. The record was kept open to allow Applicant to submit additional matters. He made a timely submission of a letter from the law firm representing him in a Chapter 7 bankruptcy case, which is admitted as Exhibit E.

Findings of Fact

Applicant is a 37-year-old employee who is seeking to obtain a security clearance for the first time. He is employed as a warehouse identification production specialist for a large company in the defense industry. He has been so employed since about mid-2016. He has a good employment record based on three spot awards received from his current employer.² His formal education includes a high school diploma and some college. His first marriage ended in divorce in 2011. He lived with a cohabitant from about October 2011 to about January 2018, when they separated. He has three children, ages 6, 4, and 2, with the cohabitant. Applicant is not currently under a court-ordered child-support obligation, but he provides financial support to his former cohabitant on an informal basis.

Applicant's employment history includes two periods of unemployment within the last several years. He had longtime employment as an operations supervisor at a copper mine during 2005-2015, during which time he earned a salary as high as \$65,000 annually. He was fired or terminated from that job in about August 2015 due to insubordination. He explained the circumstances surrounding his termination, which stemmed from his early departure from work to attend to a two-month old child who was hospitalized and his refusal to submit to a drug test the following day.³ He was unemployed from August 2015 to December 2015, a period of about four months. He next worked as a delivery driver during peak season for about two months. He was then unemployed from February 2016 until beginning his current job in mid-2016.

Applicant does not dispute his history of financial problems, which includes a 2006 Chapter 7 bankruptcy case.⁴ The SOR alleges a history of financial problems or

² Exhibit D.

³ Tr. 37-40.

⁴ Tr. 72-73.

difficulties consisting of 24 delinquent debts ranging in amounts from \$30 to \$11,017 for a total of about \$28,000. Several of the debts are for relatively small medical collection accounts. He admitted 21 of the delinquent debts, and he denied and disputed 3 of the delinquent debts in his answer to the SOR. He disclosed multiple delinquent financial accounts in his April 2016 security clearance application.⁵ He attributed the financial problems to losing his job at the mine in 2015. In sum, the 24 delinquent accounts are established by Applicant's admissions in his answer to the SOR and credit reports from 2016 and 2017.⁶

The record evidence includes three adverse information reports submitted by Applicant's current employer. A November 2016 adverse information report shows Applicant's wages were subject to garnishment for collection of a judgment for \$5,348 obtained after repossession of a vehicle in October 2015, when he could no longer afford the loan payment.⁷ An August 2017 adverse information report shows Applicant self-reported that he intended to seek relief by filing a Chapter 7 bankruptcy case, and included a detailed list of 18 delinquent accounts.⁸ And a November 2017 adverse information report shows that Applicant self-reported a misdemeanor traffic offense, knowingly displaying a false license plate, to which he pleaded guilty and paid a \$350 fine and court costs.⁹

At the hearing, Applicant admitted that the 24 delinquent debts in the SOR were unpaid or not successfully disputed or otherwise resolved.¹⁰ He estimated his current level of indebtedness at \$30,000 to \$40,000.¹¹ His intention is to address his financial problems through a Chapter 7 bankruptcy case, but a petition had not yet been filed because he was still paying the law firm's retainer. He initially made contact with the law firm in about June 2017.¹² Post-hearing, an April 30, 2018 letter from the law firm indicates that he has paid the retainer of \$1,200 and the firm would file a Chapter 7 bankruptcy case within the next few days.¹³

⁵ Exhibit 1.

⁶ Exhibits 4, 5, and 6.

⁷ Exhibit A.

⁸ Exhibit B.

⁹ Exhibit C.

¹⁰ Tr. 45.

¹¹ Tr. 31.

¹² Exhibit B; Tr. 64-66.

¹³ Exhibit E.

In addition to his full-time job, Applicant works a part-time job as a loader at a large home-improvement store. With the assistance of his current employer, he has resumed his formal education with an online university.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.¹⁴

It is well-established law that no one has a right to a security clearance.¹⁵ 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.”¹⁶ 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. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁷ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁸

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁹ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²² An

¹⁴ The 2017 AG are available at <http://ogc.osd.mil/doha>.

¹⁵ *Department of the 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).

¹⁶ 484 U.S. at 531.

¹⁷ 484 U.S. at 531.

¹⁸ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁹ Directive, ¶ 3.2.

²⁰ Directive, ¶ 3.2.

²¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²² Directive, Enclosure 3, ¶ E3.1.14.

applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁴

Discussion

Under Guideline F for financial considerations, 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 or inability 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. . .²⁵

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive 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 or sensitive information.

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

AG ¶ 19(a) inability to satisfy debts;

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

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 evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. Applicant has not made

²³ Directive, Enclosure 3, ¶ E3.1.15.

²⁴ Directive, Enclosure 3, ¶ E3.1.15.

²⁵ AG ¶ 18.

forward progress in resolving the 24 delinquent accounts that altogether total more than \$28,000. The facts and circumstances of Applicant's financial situation raise questions about his ability or willingness to meet his financial obligations. His problematic financial history suggests he may be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

With that said, Applicant's financial problems are related to his job loss in 2015, when he was terminated from his good-paying job at a mine. The job loss and subsequent decline in income would result in financial stress and strain for most people in similar circumstances. But what is missing here is evidence of material forward progress in resolving his financial problems. Although he made initial contact with the bankruptcy law firm in June 2017, he had yet to finishing paying the retainer as of the April 2018 hearing. Assuming the bankruptcy case has since been filed and he was granted a discharge by the bankruptcy court, the "fresh start" associated with that discharge is not enough to conclude that Applicant is safely out of the woods. This is especially so considering this is Applicant's second Chapter 7 bankruptcy case. In addition, it is reasonable to consider that Applicant is facing an additional financial obligation; namely, child support for the three children he had with his former cohabitant, which may include an arrearage. The trend line here is not in Applicant's favor.

To sum up, Applicant's history of financial problems or difficulties creates doubt 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 considered the whole-person concept. In doing so, I gave Applicant credit for disclosing and self-reporting his financial problems during the security clearance process. Nevertheless, I conclude that he did not 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

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a – 1.x:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant access to classified information. Eligibility denied.

Michael H. Leonard
Administrative Judge