



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



In the matter of:)
)
-----) ISCR Case No. 17-02918
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

06/13/2018

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. He did, however, mitigate the security concern raised by his personal 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 June 9, 2016. This document is commonly known as a security clearance application. On October 27, 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 him 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), effective within the Defense Department on June 8, 2017, apply here.

the action under the security guidelines known as Guideline F for financial considerations and Guideline E for personal conduct. Applicant answered the SOR on November 20, 2017, and requested a decision based on the written record without a hearing.

On March 12, 2018, Department Counsel submitted a file of relevant material (FORM).² The FORM was mailed to Applicant on March 13, 2018. He was given thirty days to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant received the FORM on April 2, 2018. Applicant responded to the FORM on April 15, 2018. The case was assigned to me on June 4, 2018.

Procedural Matters

Applicant's response to the FORM included a nine-page document that I have marked as Applicant's Exhibit (AE) A, which is admitted into evidence without objection. Included in the FORM were 13 items of evidence, items 6 through 13 of which are marked as Government Exhibits (GE) 1 through 8 and are admitted into evidence without objection.³

Findings of Fact

Applicant is 50 years old and a high school graduate. He is divorced but is currently engaged to his cohabitant. He has three sons, ages 23, 18, and 14, the two younger of whom live with Applicant's former spouse. Applicant served on active duty in the U.S. Army from October 1992 until July 2001 and in the active reserve from July 2001 until September 2005. He was in the inactive reserve until August 2007. He was honorably discharged. Since August 2011, he has been self-employed as a defense contractor.⁴

Under Guideline F, the SOR alleges that Applicant has four delinquent debts totaling over \$21,000 and that he filed a Chapter 13 bankruptcy in December 2011, which was dismissed in January 2012.⁵ Applicant admitted the debts. He qualifiedly admitted the bankruptcy filing and stated that he signed the bankruptcy filing form for a realtor who was helping him stop the mortgage company from foreclosing on Applicant's house. Applicant said that he was notified only after the fact that the form had been filed, and when he learned of it he caused the bankruptcy to be dismissed.⁶ Applicant attributed his

² The file of relevant material consists of Department Counsel's written brief and supporting documents, which documents are identified as evidentiary exhibits in this decision.

³ Items 1 and 4 are the SOR and Applicant's Answer, respectively. Those are the pleadings in this case and, therefore, they are not marked as exhibits. Items 2, 3, and 5, are the SOR transmittal letter, Applicant's receipt, and his email request to convert this case to a FORM, respectively. Those documents have no evidentiary value and, therefore, are not marked as exhibits.

⁴ GE 1; GE 2.

⁵ SOR ¶¶ 1.a-1.e.

⁶ Answer ¶¶ 1.a-1.e., and p. 6.

financial troubles to his 2011 divorce, his loss of employment in 2011, and his inability to find employment at a compensation level comparable to what he was making in 2011.⁷ The SOR debts remain currently delinquent.⁸

Under Guideline E, the SOR alleged that Applicant was fired by his employer in 2011 for improperly accessing confidential company documents and providing those documents to a direct competitor. The SOR also alleged that Applicant intentionally made false statements (in his background interview and in his SF 86) about why he was fired and how the bankruptcy came to be filed.⁹ Applicant denied those allegations. He reiterated his disclosures in his security clearance application that he had been “fired under duress and after considerable personality conflicts” with the owner and that the bankruptcy was filed without his knowledge and that he had the case dismissed once he learned of it. He also reiterated his disclosure in his security clearance application that the document in question was a writing sample he prepared on his own computer and contained no confidential company information. In short, Applicant claimed that his firing was in bad faith.¹⁰

Law and Policies

It is well-established law that no one has a right to a security clearance.¹¹ 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.”¹² 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.¹³ An

⁷ AE A.

⁸ GE 6; GE 7.

⁹ SOR ¶¶ 2.a-2.e.

¹⁰ Answer ¶¶ 2.a-2.e, and pp. 6-13. GE 1. Applicant also reiterated those explanations and denials during his background interview and in his response to the FORM. GE 2, pp. 8-9 (verified subject interview); AE A.

¹¹ *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).

¹² 484 U.S. at 531.

¹³ Directive, ¶ 3.2.

unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁵ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁶ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁷ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁸

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁹ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁰

Discussion

Guideline F - Financial Considerations

Under Guideline F for financial considerations,²¹ 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.²²

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

¹⁴ Directive, ¶ 3.2.

¹⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁶ Directive, ¶ E3.1.14.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ *Egan*, 484 U.S. at 531.

²⁰ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²¹ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²² AG ¶ 18.

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(b) unwillingness to satisfy debts regardless of the ability to do so;

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

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.

Facts admitted by an applicant in an answer to a SOR require no further proof by the Government.²³ The evidence supports a conclusion that Applicant has had a problematic financial history, as alleged. This raises security concerns under AG ¶¶ 19(a), (b), and (c). The next inquiry is whether any potentially mitigating conditions apply.

Although the SOR debts went delinquent in the 2009 to 2011 time frame, they remain currently delinquent. AG ¶ 20(a) does not apply.

Applicant attributes his financial difficulties to his divorce, his 2011 loss of employment, and his inability to find employment at a salary level comparable to his 2011 level. Those are conditions largely beyond Applicant's control as contemplated by AG ¶ 20(b). The next inquiry, however, is whether Applicant acted responsibly under those circumstances.

²³ 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").

Applicant has not submitted any documents establishing that he has paid or otherwise resolved any of the SOR debts. The Appeal Board has previously noted that it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of individual debts.²⁴ On this record, I find that none of the mitigating conditions apply.²⁵

Guideline E - Personal Conduct

In assessing an allegation of deliberate falsification, I consider not only the allegation and applicant's answer but all relevant circumstances.²⁶ Under Guideline E for personal conduct, the concern is that "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information."²⁷ A statement is false or dishonest when it is made deliberately (knowingly and willfully).

In this case, the SOR alleged that Applicant falsified the facts about his firing and his filing of bankruptcy in his security clearance application and during his background interview. From the very outset, however, starting with his security clearance application in June of 2016, in his background interview in February 2017, in his November 2017 answer to the SOR, and in his response to the FORM, Applicant has consistently and in detail explained that he believes his firing was in bad faith, the stated causes contrived, and that the bankruptcy was filed without his consent. Applicant's explanation is plausible, which shifts the burden to the Government. As such, the Government has not carried its burden of proof. I find in favor of Applicant on the Guideline E allegations.

The evidence on Applicant's financial condition raises 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.²⁸ Accordingly, I conclude that Applicant has not 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.

²⁴ 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).

²⁵ I find that Applicant's explanation of his bankruptcy filing to be credible. It was a responsible precautionary measure to protect his house, was unwittingly filed, and was dismissed shortly after filing.

²⁶ AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors).

²⁷ AG ¶ 15.

²⁸ See note 23, *supra*.

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
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.e:	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