



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



In the matter of:)	
)	
-----)	ISCR Case No. 17-03614
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

05/24/2018

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 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 April 22, 2016. This document is commonly known as a security clearance application. On December 12, 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),

the action under the security guidelines known as Guideline F for financial considerations and Guideline E for personal conduct. Applicant answered the SOR on January 31, 2018, and requested a decision based on the written record without a hearing.

On February 20, 2018, Department Counsel submitted a file of relevant material (FORM).² The FORM was mailed to Applicant on February 21, 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 March 9, 2018. Applicant did not respond to the FORM. The case was assigned to me on May 18, 2018.

Procedural Matters

Included in the FORM were eight items of evidence, that are marked as Government Exhibits (GE) 1 through 8 and are admitted into evidence without objection.

Findings of Fact

Applicant is 41 years old and a high school graduate. He is divorced with two daughters ages 18 and 20. Since March 2015, he has been employed by a defense contractor.³

Under Guideline F, the SOR alleged that Applicant has 14 delinquent debts totaling about \$16,325.⁴ Applicant admitted all of those debts but corrected some of the balances. For all but one of the debts, Applicant answered that they would be paid by the end of December 2018.⁵ He did not, however, submit any documentation supporting that claim or showing any payments towards resolving any of the debts.

Under Guideline E, the SOR alleged that Applicant deliberately failed to disclose the SOR debts in his security clearance application. He claimed in his background interview that his failure to disclose them was due to an "oversight."⁶ And, in that interview he did not dispute any of the debts. In his SOR answer, he stated that his negative reply

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 documents, which documents are identified as evidentiary exhibits in this decision.

³ GE 4.

⁴ GE 1.

⁵ GE 3. For SOR ¶ 1.n (\$322), he claimed that it was paid on August 12, 2016. The record supports Applicant's claim. GE 8, p. 3.

⁶ GE 5.

was a “mistake.”⁷ This appears to be Applicant’s first experience with the security clearance process.⁸

Law and Policies

It is well-established law that no one has a right to a security clearance.⁹ 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.”¹⁰ 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.¹¹ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹²

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹³ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁴ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁵ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁶

⁷ GE 3.

⁸ GE 4.

⁹ *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).

¹⁰ 484 U.S. at 531.

¹¹ Directive, ¶ 3.2.

¹² Directive, ¶ 3.2.

¹³ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁴ Directive, ¶ E3.1.14.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

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

Discussion

Guideline F - Financial Considerations

Under Guideline F for financial considerations,¹⁹ 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.²⁰

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 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;

¹⁷ *Egan*, 484 U.S. at 531.

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

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

²⁰ AG ¶ 18.

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.²¹ 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.

Applicant has not submitted any documents establishing that he has paid or otherwise resolved any of the SOR debts. 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 On this record, I find that none of the mitigating conditions apply.

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.²³ 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."²⁴ A statement is false or dishonest when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if, for example, the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, reasonably did not know the information, or genuinely thought the information did not need to be reported.

In this case, the SOR alleged that Applicant falsified his security clearance application by deliberately failing to disclose the indebtedness alleged under Guideline F. Applicant claimed in his background interview that his failure to disclose his debts was

²¹ 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").

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

²⁴ AG ¶ 15.

due to an “oversight.” In his Answer to the SOR, he pleaded that his failure was a “mistake.” In addition, this is apparently Applicant’s first trip through the security clearance process. On this record, I conclude that Applicant’s omission of his debts on the security clearance application was not deliberate.

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.²⁵ 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.

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.n:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	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

²⁵ See note 23, *supra*.