



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



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)

ISCR Case No. 17-04353

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

07/10/2018

**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. 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 4, 2016. This document is commonly known as a security clearance application. On January 17, 2018, 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.<sup>1</sup> It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

---

<sup>1</sup> 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.

Applicant answered the SOR on February 9, 2018, and requested a decision based on the written record without a hearing.

On March 26, 2018, Department Counsel submitted a file of relevant material (FORM).<sup>2</sup> The FORM was mailed to Applicant on March 27, 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 4, 2018. Applicant responded to the FORM on May 2, 2018. The case was assigned to me on June 29, 2018.

### **Procedural Matters**

Applicant's response to the FORM included documents that I have marked as Applicant's Exhibits (AE) A and B and which are admitted into evidence without objection. Included in the FORM were eight items of evidence. Items 3 through 8 are marked as Government Exhibits (GE) 1 through 6 and are admitted into evidence without objection.<sup>3</sup>

### **Findings of Fact**

Applicant is 56 years old and holds bachelor's and master's degrees. He is divorced (since 1992) and has no children. Since August 2015, Applicant has been employed by a defense contractor.<sup>4</sup>

Under Guideline F, the SOR alleges that Applicant filed for a Chapter 7 bankruptcy in November 2011 that was discharged in March 2012. The SOR also alleges that he is indebted to the federal government on a 2012 tax lien in the amount of \$76,406.<sup>5</sup> Applicant admitted those allegations with explanations. Tenants occupying his rental properties failed to pay the rent. In addition, the record shows that Applicant had a lengthy period of part-time employment, from January 2008 until August 2015. Those circumstances caused him to resort to credit card over-use. Ultimately, Applicant retained counsel, who recommended filing for Chapter 7 protection, which he did. He landed his current full-time job in August 2015.<sup>6</sup> At the time of his answer to the SOR (February 2018), Applicant stated that he was in the process of refinancing his principal residence to free up its equity. He also stated that he contacted the IRS about a payment plan but that he did not follow through, because he thought his refinancing would make such a

---

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

<sup>3</sup> Items 1 and 2 are the SOR and Applicant's Answer, respectively. Those are the pleadings in this case and, therefore, they are not marked as exhibits.

<sup>4</sup> GE 1.

<sup>5</sup> SOR ¶ 1.

<sup>6</sup> GE 1; GE 6.

plan unnecessary.<sup>7</sup> Applicant's May 2, 2018 response to the FORM included documentary evidence of his payment plan with the IRS (\$2,000 per month). Those documents, however, showed that only one payment had been received by IRS, on March 30, 2018, and a total owed of \$168,004. Those documents also showed that he had filed his federal income tax returns for 2014 through 2017. Applicant's tax delinquencies run from 2009 through 2013.<sup>8</sup>

## Law and Policies

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

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

---

<sup>7</sup> Answer ¶ 1.

<sup>8</sup> AE A; AE B.

<sup>9</sup> *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 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>10</sup> 484 U.S. at 531.

<sup>11</sup> Directive, ¶ 3.2.

<sup>12</sup> Directive, ¶ 3.2.

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

<sup>14</sup> Directive, ¶ E3.1.14.

<sup>15</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>16</sup> Directive, Enclosure 3, ¶ E3.1.15.

Court stated that the burden of proof is less than a preponderance of evidence.<sup>17</sup> The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>18</sup>

## **Discussion**

### **Guideline F - Financial Considerations**

Under Guideline F for financial considerations,<sup>19</sup> 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.<sup>20</sup>

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(c) a history of not meeting financial obligations;

AG ¶ 19(f) failure to file . . . annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;

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;

---

<sup>17</sup> *Egan*, 484 U.S. at 531.

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

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

<sup>20</sup> 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(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Facts admitted by an applicant in an answer to a SOR require no further proof by the Government.<sup>21</sup> The evidence supports a conclusion that Applicant has had a problematic financial history, as alleged. This raises security concerns under AG ¶¶ 19(a), (c), and (f). The next inquiry is whether any potentially mitigating conditions apply.

Applicant attributes his financial difficulties to a combination of two conditions. The first was his tenants failing to pay the rent they owed. The second was Applicant's lengthy period of under-employment. Those conditions are unlikely to recur and are circumstances largely beyond his control under AG ¶ 20(b). The next inquiry is whether he acted responsibly in light of the circumstances.

Applicant stayed financially afloat for a while using credit cards, but at some point he sought legal counsel and followed counsel's advice to seek Chapter 7 protection in 2011. That was a responsible step under the circumstances. SOR ¶ 1.a is mitigated under AG ¶¶ 20 (a) and (b).

Applicant's federal tax issue, however, presents a different problem. His tax delinquencies run from 2009, before his Chapter 7 bankruptcy discharge, through 2013, and they remain currently delinquent. Applicant's period of under-employment (January 2008 – August 2015) arguably explains why he did not address his tax issues in that time period. Applicant regained full-time employment in August 2015. Yet it was not until March 2018, after the SOR was issued and the FORM was submitted, that he set up a payment plan with the IRS. The inference is unmistakable that the issuance of the SOR and the filing of the FORM prompted Applicant to address his delinquent federal income tax debts. Being forced by the security clearance process to pay legitimate debts is not a good-faith effort to resolve those debts.<sup>22</sup> Moreover, the Appeal Board has held that applicants need to show a "meaningful track record" of adherence to a payment plan.<sup>23</sup> One payment does

---

<sup>21</sup> 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").

<sup>22</sup> ISCR Case No. 10-05909 at 3 (App. Bd. Sep. 27, 2012); ISCR Case No. 08-06058 at 7 (App. Bd. Sep. 21, 2009).

<sup>23</sup> ISCR Case No. 16-03994 at 2 (App. Bd. Apr. 27, 2018).

not constitute a meaningful track record of repayment. Applicant's federal income tax indebtedness has not been fully mitigated under AG ¶¶ 20(a), (b), or (g).

The evidence of 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.<sup>24</sup> 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.b:	Against 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

---

<sup>24</sup> AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6).