



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



In the matter of:)
)
-----) ISCR Case No. 15-01523
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2016

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him eligibility for access to classified information. Applicant did not present sufficient evidence to explain and mitigate the concern stemming from a history of financial problems. But he did present sufficient information to establish that he did not deliberately omit relevant information about his problematic financial history when he submitted a security clearance application in 2012. 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 November 5, 2012.¹ About three years later on October 17, 2015, after reviewing the application and information gathered during a background

¹ Exhibit 3 (this document is commonly known as a security clearance application).

investigation, the Department of Defense (DOD)² 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.³ The SOR is similar to a complaint. It detailed the reasons for 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 5, 2015, with handwritten responses to each allegation in the SOR, a two-page memorandum, and several enclosures.

Neither Applicant nor Department Counsel requested a hearing, and so the case will be decided on the written record.⁴ On December 8, 2015, Department Counsel submitted all relevant and material information that could be adduced at a hearing.⁵ This file of relevant material (FORM) was mailed to Applicant, who received it on December 21, 2015. He did not reply within the 30-day period from receipt of the FORM. The case was assigned to me on March 23, 2016.

Findings of Fact

Applicant is a 49-year-old employee who is seeking to obtain a security clearance for his job as a payroll analyst. He has been so employed since November 2012. A review of his security clearance application reveals an irregular or unsteady employment history.⁶ He has had ten different jobs from July 2002 to present. During that same period, he had four periods of unemployment; July 2005 to August 2005; February 2006 to April 2006; March 2010 to January 2011; and December 2011 to March 2012. His employment history includes honorable service on active duty with the U.S. Marine Corps during 1985–1989. He is married, but separated since 2010. His educational background includes a high school diploma and some college.

² The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

³ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated 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 September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

⁴ Directive, Enclosure 3, ¶ E3.1.7.

⁵ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which are identified as evidentiary exhibits in this decision.

⁶ Exhibit 2.

Under Guideline F, the SOR alleges a history of financial problems consisting of the following matters: (1) a Chapter 13 bankruptcy case, which was filed in 2007 and dismissed before completion of the payment plan in 2008; (2) two unpaid judgments for a total of about \$17,681; and (3) 19 collection or charged-off accounts for a total of about \$34,816. The largest debt is a \$19,099 charged-off account stemming from an unsecured mortgage loan. The allegations are established by Applicant's admissions as reflected in his answer to the SOR. And the allegations are established by credit reports, which were obtained during the security clearance process in 2012 and 2015.⁷

The written record also establishes that he satisfied the \$15,805 judgment in SOR ¶ 1.b in 2015.⁸ The other judgment remains unsatisfied.⁹ He also paid the delinquent accounts for \$3,318 and \$531 in SOR ¶¶ 1.e and 1.j.¹⁰ As far as I can determine, he has not provided documentation showing that the remaining delinquent accounts in the SOR have been paid, settled, subject to a repayment agreement, cancelled, forgiven, or otherwise resolved. His assertion in his answer to the SOR that he paid other delinquent accounts in the SOR is not supported by the November 11, 2015 credit report he included with his answer.

Under Guideline E, the SOR alleged that Applicant falsified material facts in response to two questions in Section 26 of his November 5, 2012 security clearance application.¹¹ The allegations are based on his omission of the delinquent accounts as well as the judgments that were in existence when he submitted the application. Indeed, he disclosed his 2007–2008 Chapter 13 bankruptcy case, but no other adverse financial matters.

Applicant explained and clarified in his answer to the SOR that there was some confusion or uncertainty on his part when he submitted his security clearance application.¹² His confusion or uncertainty was due to an uncompleted or draft security clearance application from the same time. In that document he disclosed (1) the Chapter 13 bankruptcy case, (2) the \$15,508 judgment, (3) a bad debt for \$675, (4) a bad debt for \$737, (5) a foreclosed mortgage loan, (6) a repossession of a vehicle, (7) a bad debt for \$513, and (8) a bad debt for \$508.¹³ As a result, he understood the information from the previous application would be included and he only had to update the current application.

⁷ Exhibits 4, 5, and 6.

⁸ Answer to SOR at 201; Exhibit 7 at 1.

⁹ Exhibit 7 at 2–3.

¹⁰ Answer to SOR at 162, 165.

¹¹ Exhibit 3.

¹² Answer to SOR at 6–16.

¹³ Answer to SOR at 91–106.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁴ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁵ 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.¹⁶ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁷

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁸ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁰ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²¹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²² The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²³

The AG set forth the relevant standards to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense

¹⁴ *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).

¹⁵ 484 U.S. at 531.

¹⁶ Directive, ¶ 3.2.

¹⁷ Directive, ¶ 3.2.

¹⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁹ Directive, Enclosure 3, ¶ E3.1.14.

²⁰ Directive, Enclosure 3, ¶ E3.1.15.

²¹ Directive, Enclosure 3, ¶ E3.1.15.

²² *Egan*, 484 U.S. at 531.

²³ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.²⁴ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

Under Guideline F for financial considerations,²⁵ 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.²⁶ 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 information.²⁷

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.

The evidence supports a conclusion that Applicant has a problematic financial history within the meaning of Guideline F.²⁸ I reach that conclusion based on Applicant's Chapter 13 bankruptcy case, which ended unsuccessfully with a dismissal in 2008, and the approximately \$30,000 in unresolved delinquent accounts.

²⁴ Executive Order 10865, § 7.

²⁵ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²⁶ ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

²⁷ AG ¶ 18.

²⁸ AG ¶ 19(a) and (c).

In mitigation, I have considered the six mitigating conditions under Guideline F,²⁹ and conclude that Applicant has not presented sufficient information to explain and mitigate the concern. He receives some credit for taking care of the largest judgment and two delinquent accounts. But his assertion that he paid additional delinquent accounts is not supported by the written record. His assertion may be based on the mistaken notion that simply because a debt ages off or no longer appears on his recent credit report from November 2015, it has been resolved, which is not the case. The totality of the written record does not show that Applicant has a reasonable plan to resolve the delinquent debts and has demonstrated a firm commitment to adhering to that plan. The facts do not support application of AG ¶ 20(c), the problem is being resolved or is under control, or AG ¶ 20(d), making a good-faith effort to repay.

Personal conduct under Guideline E³⁰ is a concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly handle and safeguard classified information. The suitability of an applicant may be questioned or put into doubt when an applicant engages in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with the rules and regulations. And "of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process."³¹

The deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance or in other official matters is a concern. It is deliberate if it is done knowingly and willfully. An omission of relevant and material information, for example, is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or thought the information did not need to be reported.

Applicant provided a sufficient explanation along with documentation to rebut the allegations that he deliberately failed to disclose the judgments and delinquent accounts when he completed his 2012 security clearance application. First, he disclosed the Chapter 13 bankruptcy case, which is certainly adverse information. Second, he presented documentation to support his explanation that he disclosed additional adverse financial matters in an uncompleted or draft security clearance application, which he thought would be included in his current application. Taken together, those matters persuade me that he was not attempting to deliberately omit, hide, or conceal his problematic financial history.

The concern over Applicant's financial history creates doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. In

²⁹ AG ¶ 20(a)-(f).

³⁰ AG ¶¶ 15, 16, and 17 (setting forth the concern and the disqualifying and mitigating conditions).

³¹ AG ¶ 15.

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.³² Accordingly, 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 his 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.v:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a–2.b:	For Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard
Administrative Judge

³² AG ¶ 2(a)(1)–(9).