



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



In the matter of:)
)
-----) ISCR Case No. 14-04124
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank Jr., Esq., Department Counsel
For Applicant: Bruce R. Heurlin, Esq.

11/21/2015

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke a security clearance to work in the defense industry. He has a history of financial problems or difficulties consisting of charged-off credit card accounts for more than \$100,000, and those matters are largely unresolved. He did not present sufficient evidence to explain and mitigate 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 March 3, 2014.¹ After reviewing the application and information gathered during a background investigation, the Department of Defense

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

(DOD),² on November 12, 2014, 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 guideline known as Guideline F for financial considerations. Applicant answered the SOR on January 20, 2015, and requested a hearing.

The case was assigned to me on May 1, 2015. The hearing was held as scheduled on June 4, 2015. Department Counsel offered Exhibits 1–4, and they were admitted. Applicant offered Exhibits A–AA, and they were admitted. Other than Applicant, neither party called any witnesses. The hearing transcript (Tr.) was received on June 12, 2015.

Findings of Fact

Applicant is a 56-year-old employee who is seeking to retain a security clearance previously granted to him in 2008. He is employed as a mid-level manager in facilities maintenance and safety for a major defense contractor and industrial corporation. He has worked for the same company since 2008. He has numerous favorable references, and he has a good employment record.⁴ For example, in his current job, he has been promoted 11 times since 2008, and he went from a beginning annual salary of about \$65,000 to about \$100,000.⁵

Before his current job, Applicant worked for a brewery during 2006–2008. Before that, he worked for about 28 years in the automobile industry until his departure in 2006 was necessitated due to his employer's bankruptcy. His educational background includes a bachelor's degree awarded in 2003, which he earned over a period of years while working full-time in the automobile industry.⁶

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 Exhibits B–K, T–Z.

⁵ Tr. 59–62.

⁶ Exhibit A.

Applicant is married, and he and his spouse have two adult children. His spouse was also employed in the automobile industry, but she has not been employed since they relocated to their state of current residence in 2008.

Applicant has a history of financial problems consisting of charged-off credit card accounts. The SOR allegations consist of six delinquent accounts for a total of about \$138,000 (including late fees and interest). Applicant disclosed the delinquent accounts when he completed his 2014 security clearance application,⁷ he discussed them during his 2014 background investigation,⁸ and he admitted them in his answer to the SOR. Five of the six accounts in the SOR are also established by credit reports from 2014 and 2015.⁹

One of those six accounts, the \$6,269 charged-off account in SOR ¶ 1.c, was resolved in 2011, when the creditor cancelled the debt and issued Applicant a Form 1099-C for the phantom income associated with the debt (\$5,188).¹⁰ The five other charged-off accounts for about \$132,000 are not paid, settled, in repayment, in dispute, or otherwise resolved,¹¹ and those debts may or may not be unenforceable under the state's six-year statute of limitations. His general plan or intent is that he is willing and able to pay those debts, but he does not know who to pay, he does not know who currently owns the debts, and no creditor has sued him for collection.¹²

In addition to the indebtedness in the SOR, Applicant disclosed four other delinquent accounts in his 2014 security clearance application.¹³ Applicant resolved those four accounts by paying less than the full balance as follows: (1) he settled a \$19,880 credit card account for \$1,998; (2) he settled a \$5,481 credit card account for \$548; (3) he settled a \$3,898 credit card account for \$389; and (4) he settled a \$8,706 credit card account for \$3,080.¹⁴ In total, he paid about \$6,015 to settle nearly \$38,000 of credit card debt, which is about 16% on the dollar.

⁷ Exhibit 1.

⁸ Exhibit 4.

⁹ Exhibits 2 and 3.

¹⁰ Exhibit N; Tr. 52–53, 87–88.

¹¹ Tr. 88–89.

¹² Tr. 97.

¹³ Exhibit 1.

¹⁴ Exhibits 1, 2, 3.

Applicant also has an installment repayment agreement with the IRS for back taxes for tax years 2008 and 2009.¹⁵ He estimated a beginning balance of \$36,174, on which he is paying \$500 monthly. The balance owed as of May 2015 was \$24,256.¹⁶

Applicant traces his financial problems back to 2006 when he was working in the automobile industry. Both Applicant and his wife lost their longtime jobs after their employer filed for bankruptcy in 2006. They opted to receive separation packages consisting of about 55% of the last annual salary, resulting in monthly payments of \$2,529 and \$2,546 to Applicant and his spouse, respectively.¹⁷ He stopped working there in about May 2006, and he began his job at the brewery about four months later in August 2006. He successfully worked at the brewery for about 20 months until he decided to leave because of a difficult work environment. He took a leave of absence in January 2008 so he could undergo hip-replacement surgery. He formally left the brewery in March 2008, although he had been in a no-pay status since the end of December 2007.

Applicant began his current employment in April 2008, but he was still dealing with real estate in his state of former residence. In March 2008, Applicant put his home up for sale at the price of \$299,000, but due to a decline in the real estate market they were unable to sell it until December 2008 for the price of \$250,400.¹⁸ To facilitate the sale and pay off the mortgage loan, and avoid a short sale, Applicant contributed about \$58,000. He paid the \$58,000 through an assortment of credit cards, which is part of the indebtedness in the SOR.

Another piece of real estate is a family-owned duplex that he and his brother had inherited.¹⁹ His brother was not interested in the duplex, and so, Applicant bought his brother's interest and obtained a mortgage loan of about \$160,000 in June 2005. Applicant's son and his family occupy the lower level of the duplex. The upper level of the duplex was rented out, but is now vacant. Applicant and his wife use it during family visits. The status of the mortgage loan account is pays as agreed, it had a balance of about \$127,402 as of March 2015, and a scheduled payment of \$1,155, but Applicant actually pays \$1,200 in an effort to reduce the principle.²⁰

¹⁵ Exhibit AA (has an explanation for the back taxes); Tr. 124–126.

¹⁶ Exhibit R at 4.

¹⁷ Tr. 34–36.

¹⁸ Exhibit AA at 8–12.

¹⁹ Exhibit AA at 13–17; Tr. 40–42.

²⁰ Exhibit 3 at 5–6.

After selling the home in their state of former residence, Applicant and his wife bought a home in their state of current residence in April 2009.²¹ The purchase price was \$221,000. The status of the mortgage loan account is pays as agreed, it had a balance of about \$197,382 as of March 2015, and a scheduled payment of \$1,368, but Applicant actually pays \$1,400 in an effort to reduce the principle.²²

Applicant sought professional assistance and advice from two attorneys in an effort to deal with his financial problems. In 2010, he and his wife consulted a bankruptcy attorney who advised them to continue paying the secured debts, stop paying the unsecured debts, and pursue relief in bankruptcy court should a creditor sue them for collection of a debt. In 2014, they consulted a second attorney who advised them that the outstanding debts with the creditors in the SOR were unenforceable under the state's three-year statute of limitations. That advice was incorrect because the applicable statute of limitations is six years.²³

Applicant made efforts in the past to resolve these debts, although his last payment was made in about March 2010.²⁴ He sent letters in 2011, 2012, and 2013 to the creditors with offers of settlement, but received no replies.²⁵

Applicant and his wife went through a financial counseling session in April–May 2015.²⁶ His current gross annual income is about \$160,000, which includes his salary and the pension payments he and his wife receive. He has a net monthly income of about \$9,823, which is about \$117,876 annually.²⁷ As a result of the financial counseling, he is now using a written budget,²⁸ although he conceded “it’s a work in progress.”²⁹ He estimated a net monthly surplus of about \$1,000.³⁰ His budgeting paperwork shows, among other things, a net worth of about \$158,000, one credit card account with a balance greater than \$200, investment and retirement accounts worth about \$121,000, a checking account balance of \$1,620, a savings account balance of

²¹ Exhibit AA at 4–7; Tr. 43–44.

²² Exhibit 3 at 2.

²³ Tr. 50–51.

²⁴ Tr. 95.

²⁵ Exhibits L–Q.

²⁶ Exhibit S.

²⁷ Exhibit S (budget assessment).

²⁸ Exhibit R.

²⁹ Tr. 113.

³⁰ Tr. 113.

\$3,828, and assets that include ownership of two time-share vacation properties valued at \$18,250 each.³¹ The time-shares were bought in 2002 and 2005 before his financial problems were apparent.³²

Law and Policies

It is well-established law that no one has a right to a security clearance.³³ 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.”³⁴ 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.³⁵ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.³⁶

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.³⁷ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁴⁰ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁴¹

³¹ Exhibit R.

³² Tr. 128–129.

³³ *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).

³⁴ 484 U.S. at 531.

³⁵ Directive, ¶ 3.2.

³⁶ Directive, ¶ 3.2.

³⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³⁸ Directive, Enclosure 3, ¶ E3.1.14.

³⁹ Directive, Enclosure 3, ¶ E3.1.15.

⁴⁰ Directive, Enclosure 3, ¶ E3.1.15.

⁴¹ *Egan*, 484 U.S. at 531.

The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.⁴²

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 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.⁴³ 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,⁴⁴ 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.⁴⁵ 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.⁴⁶

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.

⁴² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁴³ Executive Order 10865, § 7.

⁴⁴ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

⁴⁵ 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).

⁴⁶ AG ¶ 18.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. Taken together, the evidence indicates inability or unwillingness to satisfy debts⁴⁷ and a history of not meeting financial obligations⁴⁸ within the meaning of Guideline F. In reaching that conclusion, I looked closely at the evidence in an effort to assess the facts and circumstances, which should be taken together and viewed as a whole. Those facts and circumstances form part of a single or overall narrative of financial mismanagement by misusing or abusing credit card accounts to the point where Applicant was financially overextended as well as a good candidate for bankruptcy. And those same facts and circumstances reflect a pattern of questionable judgment, untrustworthiness, unreliability, or irresponsibility.

In mitigation, I have considered six mitigating conditions under Guideline F,⁴⁹ and the following are most pertinent:

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 [person's] current reliability, trustworthiness, or good judgment;

AG ¶ 20(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or death, divorce, or separation), and the [person] acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

I considered those four mitigating conditions, and none, individually or together, is sufficient to mitigate the security concern stemming from Applicant's ongoing and largely unresolved financial problems. With that said, there are a number of extenuating or mitigating circumstances to consider in Applicant's case. First, he has numerous favorable references, and he has a good if not outstanding employment record. Second, Applicant and his wife experienced unexpected job loss in 2006, although that was lessened by the severance package that included monthly pension payments. Third, Applicant had periods of unemployment between jobs. Fourth, Applicant incurred the expense of a major relocation in 2008 for his current job. Fifth, Applicant incurred the

⁴⁷ AG ¶ 19(a).

⁴⁸ AG ¶ 19(c).

⁴⁹ AG ¶ 20(a)–(f).

unexpected expense of \$58,000 to sell his home in 2008 due to a declining real estate market. And sixth, Applicant twice sought and followed professional guidance from attorneys in an effort to address his financial problems. Seventh, Applicant wrote letters and made settlement offers to resolve the credit card accounts during 2011–2013. And eighth, Applicant fully disclosed his delinquent accounts on his 2014 security clearance application and background investigation.

Of course, the purpose of a security clearance case is not aimed at collecting debts.⁵⁰ Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.⁵¹

Here, the evidence does not support a conclusion that Applicant has established a plan and is taking steps to implement that plan sufficient to mitigate the concern. My assessment of Applicant's overall financial situation is that, unless a creditor brings a collection lawsuit, he is simply waiting for his bad debts to age off credit reports or become unenforceable under his state's statute of limitations or both. Although that approach is perfectly legal, it is not an approach that demonstrates good faith and responsible conduct when seeking access to classified information. Moreover, Applicant has paid about \$6,000 to settle \$38,000 in credit card debt, he had another \$6,000 of credit card debt cancelled, and \$132,000 in credit card debt is unresolved. In other words, Applicant has paid about \$6,000 (or about 3.5%) of the \$176,000 in delinquent credit card debt he incurred, which may fairly be described as a token if not meager effort. Although I am persuaded that Applicant takes these matters seriously, he has not displayed sufficient persistence and intensity in addressing his financial problems.

⁵⁰ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

⁵¹ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

Applicant's history of financial problems 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 gave due consideration to the whole-person concept.⁵² 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 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.f:	Against Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge

⁵² AG ¶ 2(a)(1)–(9).