



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



In the matter of:)
)
-----) ISCR Case No. 15-03305
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

04/05/2016

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 rebut, explain, extenuate, or mitigate the facts proven by the written record concerning a history of financial problems. With that said, he did not deliberately omit relevant information about his finances when he completed a 2013 security clearance application. 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 21, 2013.¹ More than two years later on October 28, 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 16, 2015.

Neither Applicant nor Department Counsel requested a hearing, and so the case will be decided on the written record.⁴ On January 27, 2016, 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 February 8, 2016. He replied within the 30-day period from receipt of the FORM. His reply consists of (1) a two-page memorandum, (2) a two-page memorandum from his spouse, and (3) a one-page letter of reference from his supervisor. Those documents are made part of the written record as Exhibits A, B, and C. The case was assigned to me on March 29, 2016.

Procedural Matters

The FORM includes Exhibit 4, which is a set of interrogatories answered by Applicant in October 2014. It includes a report of investigation (ROI) summarizing Applicant's interview during the 2013 background investigation. The summary appears to be properly authenticated via Applicant's answers to the interrogatories as required under ¶ E3.1.20 of the Directive. Accordingly, the summary and the remainder of Exhibit 4 are admissible.

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.

Findings of Fact

Applicant is a 46-year-old employee who is seeking to retain a security clearance for his job as a fuels specialist.⁶ He has been so employed since 2012. He has a good employment record according to a letter from his supervisor.⁷ He also worked as a fuels specialist for another federal contractor from 2009 to 2012. His employment history includes honorable service on active duty and then with several state air national guard units from 1988 to 1992; 1994 to 2000; 2000 to 2003; and 2003 to his recent retirement. His military service includes a six-month deployment to Iraq from June 2008 to December 2008. His educational background includes a high-school diploma. He married in 1994, and they have two children. He and his family have lived in the same leased apartment since 2007.

Under Guideline F, the SOR alleges a history of financial problems consisting of 14 delinquent debts for a total of about \$30,000. The debts are based on collection accounts, charged-off accounts, and an unpaid judgment. Applicant admitted the delinquent debts in his answer to the SOR. Further, the delinquent debts are established by credit reports, which were obtained during the security clearance process in 2013, 2015, and 2016.⁸

The written record does not establish by substantial evidence that Applicant resolved any of the 14 delinquent debts. In response to the interrogatories, he submitted documentation showing (1) earnings from his job as well as a part-time job, (2) a request to receive a lump-sum distribution from his 401(k) account for about \$6,500 in October 2014, and (3) correspondence with three or four creditors in an attempt to reach settlements in 2014.⁹ Otherwise, Applicant has not provided documentation showing that the 14 delinquent accounts in the SOR are paid, settled, subject to a repayment agreement, in dispute, cancelled, forgiven, or otherwise resolved.

Under Guideline E, the SOR alleged that Applicant falsified material facts in response to three questions concerning delinquency involving routine accounts in Section 26 of his June 2013 security clearance application.¹⁰ The falsification allegation is based on his omission of the delinquent accounts that were in existence when he submitted the application. Indeed, he disclosed no adverse financial matters in his application.

⁶ Exhibit 4.

⁷ Exhibit C.

⁸ Exhibits 5, 6, and 7.

⁹ Exhibit 4 at 17–32.

¹⁰ Exhibit 3.

During the 2013 background investigation, Applicant initially admitted that he was perhaps 30 days behind on some accounts.¹¹ Pressed further, he admitted that he had no idea about his household finances until the previous month when he took over those duties from his spouse. Before that, he was uninvolved and allowed his wife to spend whatever she thought was necessary. He added that he had not obtained a credit report. He attributed his indebtedness to (1) irresponsible credit card spending, (2) allowing a home to go into a short sale to facilitate a move, and (3) excessive spending for his two children to live in a good neighborhood, attend a good school, and expensive extracurricular activities.¹²

In his answer to the SOR, Applicant admitted but then explained away the falsification allegation because he was unclear on the time frame of the debts. In his two-page memorandum in reply to the FORM, he unequivocally denied lying, misleading, or obfuscating facts about his financial situation.¹³ He explained that after a 2001 bankruptcy, his wife assumed responsibility for managing the household finances. His role was limited to earning an income. He further explained that he was unaware of any financial problems until it was brought to his attention during the security clearance process. He concluded by stating that he had answered all questions honestly and truthfully, and he did not knowingly lie or omit information about his financial problems. In addition to his denials, his spouse submitted a two-page memorandum in which she stated that she handled all the household financial matters during the relevant time.¹⁴

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁵ 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.”¹⁶ 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.

¹¹ Exhibit 4 at 4.

¹² Exhibit 4 at 6.

¹³ Exhibit A.

¹⁴ Exhibit B.

¹⁵ *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).

¹⁶ 484 U.S. at 531.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁷ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁸

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁰ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²¹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²² In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²³ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁴

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.²⁵ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

¹⁷ Directive, ¶ 3.2.

¹⁸ Directive, ¶ 3.2.

¹⁹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁰ Directive, Enclosure 3, ¶ E3.1.14.

²¹ Directive, Enclosure 3, ¶ E3.1.15.

²² Directive, Enclosure 3, ¶ E3.1.15.

²³ *Egan*, 484 U.S. at 531.

²⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁵ Executive Order 10865, § 7.

Discussion

Under Guideline F for financial considerations,²⁶ 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.²⁷ 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.²⁸

The concern under Guideline F 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.²⁹ I reach that conclusion based on the findings of fact that show Applicant has done very little to address his financial problems, which date back to at least 2013 when he completed the security clearance application. In this regard, I note that he has been steadily employed for many years. I also note that not only did he take a hands-off approach to his household finances, he became deliberately ignorant of his household finances, which is not the mark of a responsible person exercising sound judgment. Although he submitted documentation concerning a lump-sum distribution from a 401(k) account as well as settlement correspondence with several creditors, he did not follow through on those matters. In other words, he did not submit documentation showing how the 401(k) money was spent. And he did not submit documentation showing settlements of delinquent accounts.

²⁶ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²⁷ 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).

²⁸ AG ¶ 18.

²⁹ AG ¶ 19(a) and (c).

In mitigation, I have considered the six mitigating conditions under Guideline F,³⁰ and conclude that Applicant has not presented sufficient information to rebut, explain, extenuate, or mitigate the facts proven by the written record. 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. Simply put, Applicant has not done enough to persuade me that he has a good handle on his overall financial situation and that he will resolve the delinquent debts in the foreseeable future.

Personal conduct under Guideline E³¹ 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."³²

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 is denying the falsification allegation in SOR ¶ 2.a, which alleged that he deliberately failed to report his delinquent accounts in his 2013 security clearance application. He explained that he omitted the adverse financial information because he was unaware of those matters, since his spouse handled the household finances. His explanation is not fanciful, disingenuous, or incredible on its face. I conclude his omission was not deliberate.

The concern over Applicant's problematic financial history creates doubt about his current 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.³³ Accordingly, I conclude that he did not meet his ultimate burden of persuasion to show that it is clearly

³⁰ AG ¶ 20(a)–(f).

³¹ AG ¶¶ 15, 16, and 17 (setting forth the concern and the disqualifying and mitigating conditions).

³² AG ¶ 15.

³³ AG ¶ 2(a)(1)–(9).

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.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 eligibility for access to classified information.

Michael H. Leonard
Administrative Judge