



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



In the matter of:)
)
-----) ISCR Case No. 17-02013
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

06/04/2019

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for access to classified information. She did not provide sufficient evidence to explain and mitigate her history of financial problems. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, on February 9, 2016.¹ This document is commonly known as a security clearance application. Thereafter, on July 10, 2017, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the

¹ Exhibit 1.

national interest to grant her eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR on July 21, 2017. Her answers were mixed. She also requested an in-person hearing before an administrative judge.

The case was assigned to me on October 17, 2017. The hearing scheduled for January 23, 2018, was postponed due to a government shutdown. The hearing took place as rescheduled on April 17, 2018. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-5. Applicant offered documentary exhibits, which were admitted as Exhibits A-F. No witnesses were called other than Applicant.

Findings of Fact

Applicant is a 32-year-old employee who is seeking to obtain a security clearance for the first time. She is employed as a security guard for a company doing business in the defense industry. She has been so employed since November 2015. She has been steadily employed other than a period of unemployment from October 2010 to August 2012.

Applicant has married twice and has three minor children from her first marriage. She married the first time in October 2003 and divorced, after a separation, in January 2014. She married the second time in July 2014 and separated in February 2017. A January 2014 child-support order required the father to provide medical insurance for the children, and the costs of medical, dental, and vision expenses not paid by insurance were shared equally between Applicant and the father.² That was modified in March 2015 with Applicant and her ex-husband having joint legal custody of the three children; neither is obliged to pay the other child support; and she is responsible for providing medical, dental, and vision insurance for the minor children.³

The SOR concerns a history of financial problems, including a joint Chapter 7 bankruptcy case with her first husband ending in discharge of more than \$250,000 in liabilities⁴ and 42 delinquent accounts ranging in amounts from \$57 to \$6,341 for a total of approximately \$33,751. The 42 delinquent accounts in the SOR consist of 2 unpaid judgments, 34 medical collection accounts, and 6 consumer accounts. Several of the medical collection accounts are for relatively small or minor amounts (e.g., \$57). The SOR allegations are established by Applicant's admissions and credit reports from 2016 and 2017.⁵ Other than the consumer account in SOR ¶ 1.dd for \$618, the delinquent

² Exhibit A.

³ Exhibit A.

⁴ Exhibit B.

⁵ Exhibits 3, 4, and 5.

accounts have not been paid, settled, placed into a repayment arrangement, forgiven, cancelled, or otherwise resolved. The \$618 consumer account was reduced to a judgment in March 2015, which was satisfied after making a series of payments for a total of \$1,507 in December 2016.⁶ In addition, the delinquent consumer accounts in SOR ¶¶ 1.e and 1.l for \$1,171 each are duplicates.⁷ And the delinquent consumer account for \$238 in SOR ¶ 1.jj was included in the bankruptcy.⁸

Concerning the 34 medical collection accounts, Applicant explained she denied the medical collection accounts in her answer to the SOR because she believes her first husband is responsible for those debts.⁹ She admitted that she had not “touched” the medical collection accounts, and she was unaware of how much medical debt she currently owes.¹⁰ She presented medical billing information addressed to her that shows she owes or is past due on more than \$5,000.¹¹ A review of the February 2016 credit report, which was obviously relied on in drafting the SOR, shows the medical collection accounts are described as individual accounts.¹²

Overall, Applicant’s financial situation is less than stable. She described her financial situation as living paycheck to paycheck and her husband’s work history as “very rough.”¹³ She has no cash savings of any kind.¹⁴ In addition to the indebtedness discussed above, she owes approximately \$15,291 in student loans, which are in forbearance.¹⁵ She stated that she is current with filing state and federal income tax returns.¹⁶

Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

⁶ Exhibit C.

⁷ Tr. 55.

⁸ Tr. 58-59.

⁹ Tr. 50-51.

¹⁰ Tr. 52-53.

¹¹ Exhibit D.

¹² Exhibit 3.

¹³ Tr. 62-63; 65.

¹⁴ Tr. 61.

¹⁵ Exhibit E; Tr. 62.

¹⁶ Tr. 63-64.

Program (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.¹⁷ 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.”¹⁸ 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. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁹ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁰

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.²¹ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²²

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²³ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁴ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁵ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁶

¹⁷ *Department of the 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).

¹⁸ 484 U.S. at 531.

¹⁹ 484 U.S. at 531.

²⁰ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²¹ Directive, ¶ 3.2.

²² Directive, ¶ 3.2.

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

²⁴ Directive, Enclosure 3, ¶ E3.1.14.

²⁵ Directive, Enclosure 3, ¶ E3.1.15.

²⁶ Directive, Enclosure 3, ¶ E3.1.15.

Discussion

Under Guideline F for financial considerations, 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 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 or sensitive information. . . .²⁷

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive 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 or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

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;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions taken to resolve the issue.

The evidence supports a conclusion that Applicant has a history of financial problems that is sufficient to raise a security concern under Guideline F. The two disqualifying conditions noted above apply to this case.

²⁷ AG ¶ 18.

Concerning the evidence in extenuation and mitigation, Applicant is in a difficult situation, and I certainly have empathy for her. But even if I set aside the numerous medical collection accounts, she still has two unpaid judgments for about \$8,000 and some delinquent consumer debt for which she has done nothing to resolve. Her household income is now limited to what she earns due to her marital separation. She has no cash savings or financial reserve and no plan to address her delinquent debts. Given the facts and circumstances of her financial situation, it is likely that most of the indebtedness in the SOR will remain unpaid regardless of the outcome of this case. It is also likely that the financial strain she is under will increase when her student loans exit forbearance. Although I have credited Applicant for circumstances largely beyond her control (the marital difficulties in particular), her evidence is not sufficient to fully explain and mitigate the security concern stemming from her long-standing history of financial problems, which is ongoing and likely to continue for the foreseeable future.

Following *Egan* and the clearly consistent standard, I have doubts about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive 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 considered the whole-person concept. I conclude that she has not met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her 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.k:	Against Applicant
Subparagraphs 1.l:	For Applicant
Subparagraphs 1.m -- 1. ee:	Against Applicant
Subparagraphs 1. dd:	For Applicant
Subparagraphs 1. ee -- 1. ii:	Against Applicant
Subparagraphs 1. jj:	For Applicant
Subparagraphs 1. kk -- 1. qq:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard
Administrative Judge