



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



In the matter of:)
)
-----) ISCR Case No. 17-02590
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

05/29/2019

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke her eligibility for access to classified information. She provided sufficient evidence to explain and mitigate her history of financial problems. Accordingly, this case is decided for 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 June 25, 2016.¹ This document is commonly known as a security clearance application. Thereafter, on August 24, 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 September 19, 2017. Her answers were mixed and included brief explanations for each debt. She also requested an in-person hearing before an administrative judge.

The case was assigned to me on October 31, 2017. The hearing scheduled for January 24, 2018, was postponed due to a government shutdown. The hearing took place as rescheduled on April 18, 2018. Applicant appeared with counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-8. Applicant offered documentary exhibits, which were admitted as Exhibits A-S. No witnesses were called other than Applicant.

The record was kept open until May 18, 2018, to allow Applicant an opportunity to submit additional matters. She made a timely submission, and those matters are admitted without objections as Exhibits T-Y.

Findings of Fact

Applicant is a 50-year-old employee who is seeking to retain a security clearance previously granted to her. She is employed as a software engineer for a company in the defense industry. She has been so employed since 2005. Her job includes managing 15 employees who are building software products for customers. Her formal education includes a bachelor's degree in computer science. She has two adult children, a 24-year-old son attending law school and a 23-year-old daughter attending pharmacy school. A native of India, Applicant immigrated to the United States in 1990, and she became a U.S. citizen in 2001. Likewise, her husband is a native of India and a naturalized U.S. citizen. Applicant and her husband met and married in the United States.

The SOR concerns 11 delinquent debts for a total amount of about \$37,270 and a Chapter 7 bankruptcy case discharged in 2001. Overall, she attributed the financial problems to a business failure with her husband's restaurant, which he operated in partnership with another person during 2013-2015, and her husband's long-standing alcoholism and multiple drunk-driving offenses, which were both hidden and unknown to her until 2014. Applicant's marriage was consistent with her Indian culture with her husband in charge and responsible for the finances. As a result, Applicant was unaware of the financial problems, aside from the bankruptcy, until 2014 when she discovered her husband's problem with alcohol. The matters in SOR ¶¶ 1.a through 1.i are discussed *seriatim* below.

Charged-off unsecured consumer loan for \$20,460.² Applicant settled this account for \$9,700 in September 2017, which was about 50% of the balance of the current principal.

² Exhibit F.

Charged-off credit card account for \$4,307.³ Applicant settled this account by making six payments for a total of \$2,153 during 2017-2018.

Charged-off credit card account for \$3,367.⁴ Applicant settled this account for \$1,300 in March 2018.

Collection account for \$2,460.⁵ This debt stemmed from an apartment lease for her adult children while attending college. The account was resolved with a zero balance as of February 2018.

Collection account for a telecommunications bill for \$2,189.⁶ Applicant admits she owes something for this account, but she is disputing the balance due with the assistance of a credit and debt consulting firm.

Collection account for a telecommunications bill for \$1,453.⁷ This account stems from her husband's business failure. She is working with the credit and debt consulting firm to resolve the account.

Collection account for a merchant credit card account for \$803.⁸ This account had been in dispute, and with the assistance of the credit and debt consulting firm, Applicant settled the account for the lesser amount of \$440 in May 2018.

Charged-off account for a consumer account for \$287.⁹ This account had been in dispute, and with the assistance of the credit and debt consulting firm, Applicant settled the account for the lesser amount of \$127 in May 2018.

Medical collection account for \$265.¹⁰ Applicant believes this account should have been paid by her health insurance, she is attempting to validate the account, and she will pay it if the account is verified.

Charged-off merchant credit card account for \$819. This account is a duplicate of the account in SOR ¶ 1.g.

³ Exhibit G.

⁴ Exhibit H.

⁵ Exhibit I.

⁶ Exhibits J and V.

⁷ Exhibits K and W.

⁸ Exhibits L, M, and Y.

⁹ Exhibits N and U.

¹⁰ Tr. 49-51.

Collection account for telecommunications account for \$860.¹¹ This account has been in dispute, and Applicant is working with the credit and debt consulting firm to resolve it.

Chapter 7 bankruptcy case filed in 2000 and discharged in 2001. This case started as a Chapter 13 case, also called a wage earner's plan, filed in 1998 to allow Applicant and her husband to repay debt per a court-approved payment plan. It was necessitated when her husband lost his job. Applicant made the monthly payments until she lost her job. As a result, the bankruptcy case was converted to a Chapter 7 case, which ended in discharge.

In addressing the indebtedness, Applicant's plan or strategy has been to take one account at a time usually focusing on the account with the highest balance.¹² To that end, she has taken on freelance work as a cook for large events (e.g., weddings) and banquets to earn additional money used to pay off debt. Her annual salary with her employer is about \$140,000, and her husband earns about \$40,000 annually as a part-time software engineer. He has had difficulty keeping a job due to his long-standing alcoholism. She participates in her employer's 401(k) plan. Her first and second monthly mortgage payments of about \$3,700 are current. She does not have a car loan. In addition to working with the credit and debt consulting firm, she had credit counseling in April 2018, and she retained the services of a financial counseling firm in early 2018 with the goals of reducing debt and improving her credit score.¹³

Applicant assumed control and responsibility for the household finances in about 2014-2015.¹⁴ She described the process of learning about her husband's long-standing alcoholism and multiple drunk-driving offenses as shocking.¹⁵ She only learned about his husband's problems in 2014, when a counselor at a treatment center called her and invited her to a meeting with her husband.¹⁶ Records indicate that Applicant's husband has had residential treatment multiple times for varying lengths beginning in December 2007 with the most recent stay in 2017.¹⁷ She reports that her husband is now sober and is working part-time as a software engineer.¹⁸

¹¹ Exhibits O and X.

¹² Tr. 37-40.

¹³ Exhibits C, E, and Q.

¹⁴ Tr. 56-57.

¹⁵ Tr. 59-61.

¹⁶ Tr. 71-72.

¹⁷ Exhibit D.

¹⁸ Tr. 30-31.

In light of her marital difficulties, Applicant and her husband entered into a written agreement in October 2017 to maintain financial stability and guide their marriage.¹⁹ Among other things, they agreed that her husband will remain sober and will provide financial support to the family. They also agreed that if her husband fails to maintain his sobriety, a formal separation or divorce will follow. Applicant was unequivocal in stating that she is firmly committed to initiating a separation or divorce if her husband does not adhere to the agreement.²⁰

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 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, 2017.²¹

It is well-established law that no one has a right to a security clearance.²² 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.”²³ 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.²⁴ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁵

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.²⁶ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁷

¹⁹ Exhibit S.

²⁰ Tr. 73-74.

²¹ The 2017 AG are available at <http://ogc.osd.mil/doha>.

²² *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).

²³ 484 U.S. at 531.

²⁴ 484 U.S. at 531.

²⁵ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁶ Directive, ¶ 3.2.

²⁷ Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁸ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³⁰ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³¹

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. . . .³²

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(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;

²⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁹ Directive, Enclosure 3, ¶ E3.1.14.

³⁰ Directive, Enclosure 3, ¶ E3.1.15.

³¹ Directive, Enclosure 3, ¶ E3.1.15.

³² 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;

AG ¶ 20(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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.

Concerning the evidence in extenuation and mitigation, Applicant receives credit under the mitigating conditions mentioned above. The mitigating condition at AG ¶ 20(a) is established because Applicant's financial problems are largely due to her husband's mishandling of the household finances due to his long-standing alcoholism. Because he is now sober and in the marriage under the terms of the written agreement noted above, I conclude that Applicant's financial problems occurred under such circumstances that they are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, or good judgment.

The mitigating condition at AG ¶ 20(b) is established because the conditions that resulted in the financial problems were largely beyond Applicant's control. Her husband's business failure and his mishandling of the household finances were largely beyond her control given the nature of their marriage and her ignorance of his long-standing alcoholism and multiple drunk-driving offenses. Since learning about her husband's problems, Applicant has assumed responsibility for handling the household finances and is re-establishing their household finances.

The mitigating condition at AG ¶ 20(c) is established based on Exhibits C, E, and Q. Applicant's efforts in this regard are ongoing.

The mitigating condition at AG ¶ 20(d) is established due to Applicant's substantial work in addressing the past-due debts. As established in the findings of fact, she settled 6 of the 11 delinquent accounts. In doing so, she paid approximately \$16,180 to six creditors.

The mitigating condition at AG ¶ 20(e) is established because Applicant is disputing 4 of the 11 delinquent accounts. Moreover, she provided supporting documentation regarding three of accounts in dispute, lacking documentation for the minor medical collection account for \$265.

Overall, I was impressed by Applicant, by her perseverance under difficult circumstances, and by her strength of character she displayed by staying in a marriage when many people would have called it quits. No fool, she insisted her husband enter into an agreement to guide the future of their marriage. The written agreement is essentially a last-chance agreement, which means Applicant is taking the matter quite seriously. Although Applicant has not presented a perfect case in mitigation, her case is a reminder that resolving difficult financial problems is a process, a process that takes time. To date, Applicant has done a good job in resolving the financial problems, and I am persuaded she will continue working the process. Likewise, I am persuaded that similar problems are unlikely to recur.

Following *Egan* and the clearly consistent standard, I have no doubts or concerns 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 he has 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

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a -- 1.l:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard
Administrative Judge