



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 -----,)
 also known as -----¹) ISCR Case No. 18-01641
)
 Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

03/29/2019

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for access to classified information. Her financial difficulties are due to circumstances largely beyond her control (e.g., serious health problems, a separation eventually resulting in a divorce, unemployment, and underemployment). She has acted responsibly under trying circumstances and will address the unresolved delinquent debts as her financial situation continues to stabilize. 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,

¹ Applicant resumed using her former name per a June 2018 divorce decree.

on November 14, 2017.² This document is commonly known as a security clearance application. Thereafter, on July 24, 2018, 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 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 August 21, 2018. Her answers were mixed; she admitted 6 of the 12 delinquent debts alleged; she denied the others; and she provided short explanations for each answer. She also requested a hearing before an administrative judge.

The case was assigned to me on September 24, 2018. The hearing took place as scheduled on December 3, 2018. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-5. Applicant made an oral presentation, but presented no documentation. No witnesses were called other than Applicant.

The record was kept open until January 3, 2019, to allow Applicant to submit documentary matters. She made a timely submission on January 2, 2019, and those matters are admitted without objections as follows: (1) Exhibit A, military records and letters of recommendation; (2) Exhibit B, a June 2018 divorce decree; and (3) Exhibit C, a December 2018 establishment judgment and order for child support.

Findings of Fact

Applicant is a 30-year-old employee who is seeking to obtain a security clearance in the defense industry for the first time. She previously held a security clearance during previous military service. She is employed as a gunner involved in ordnance testing since December 2017. Her formal education includes a high school diploma. She married in 2008, separated in May 2017, and divorced in June 2018. She is the primary residential parent for two minor children, ages 10 and 5.

Applicant's employment history includes honorable service in the U.S. Navy during 2006-2012, for about five and a half years. She was discharged due to disability as explained further below. Her retired pay, which she receives from the Department of Veterans Affairs, is about \$1,600 monthly.³ She was then unemployed from about January 2012 to May 2017, when she left her husband. She then worked as a self-employed office assistant working for her parents for about six months until she began her current job in the defense industry. She earned about \$400 weekly working for her parents.

² Exhibit 1.

³ Tr. 44-45.

The SOR alleges 12 delinquent debts consisting of charged-off or collection accounts for a total of about \$18,000. Three of the accounts are medical collection accounts for less than \$100 each. At the hearing, Applicant agreed that the status of the debts remained the same as when she answered the SOR.⁴ In addition to Applicant's admissions noted above, the 12 delinquent debts are established by three credit reports from January 2018, September 2018, and December 2018, respectively.⁵ So far as I can determine, the 12 delinquent debts in the SOR have not been paid, settled, placed into a repayment arrangement, cancelled, forgiven, or otherwise resolved.

Applicant attributes her negative financial history to circumstances largely beyond her control. She described at length the chronology of events leading to her current situation during her hearing testimony. She was discharged from the Navy in 2012 due to numerous medical problems, primarily cervical cancer. Her discharge paperwork states that the reason for separation was temporary disability, and she was placed on the temporary disability retired list, and subsequently she was placed on the permanent disability retired list in 2015.⁶ After her discharge from the Navy in 2012, she spent the next five years dealing with illness, in and out of the hospital, and undergoing different procedures. Her inability to work during that time placed a financial strain on the family finances. Her husband, also a Sailor, continued on active duty for about two years. After his discharge in 2014, they relocated to a state to be close to her husband's family. The plan was her husband was supposed to begin a railroad job within two months of his discharge, but that was delayed for several months, which created additional financial strain. They then started the slow process of rebuilding their financial house.

Applicant had a serious medical episode in which she nearly passed away in August 2016. After that, her health improved, she returned to being a functioning adult, and she started looking into returning to work or going to school through her GI Bill benefits. Her husband was opposed to her plans, and marital discord followed. Unsatisfied with her husband, she left in May 2017 and moved across the country to live with and work for her parents. When she left her husband, she departed with her clothing, her children's clothing, a vehicle, her retired pay, and really nothing else. She filed for child support in July 2017 and for divorce in September 2017, but was unable to obtain service of process on her husband. That changed when her husband relocated to Applicant's state of residence for his employment in April 2018.

Two months later in June 2018 the state court granted a divorce decree, but deferred on the issue of child support.⁷ Applicant was designated as the primary residential parent. The issue of child support was finally settled in December 2018, a

⁴ Tr. 41-42.

⁵ Exhibits 3, 4, and 5.

⁶ Exhibit A.

⁷ Exhibit B.

few days after the hearing in this case.⁸ Her ex-husband was ordered to pay a judgment in the amount of \$3,180 for child support for the period from May 2017 through December 2018. He was also ordered to pay current child support of \$484 monthly beginning January 2019. The total monthly payment to Applicant is \$534 monthly, which includes \$50 toward the arrearage or judgment.

Since beginning her job in the defense industry, Applicant was able to move out of her parents' home and purchase a relatively new vehicle (a 2017 Hyundai), which was necessary to cover the mileage she must drive. She has not incurred new delinquent debt other than the automobile and the purchase of a washer and dryer. In addition to her retired pay and the child support, she earns about \$22 hourly and estimated her 2018 earnings at about \$45,000.⁹

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, 2017.¹⁰

It is well-established law that no one has a right to a security clearance.¹¹ 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."¹² 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.¹³ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁴

⁸ Exhibit C.

⁹ Tr. 64-65.

¹⁰ The 2017 AG are available at <http://ogc.osd.mil/doha>.

¹¹ *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).

¹² 484 U.S. at 531.

¹³ 484 U.S. at 531.

¹⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁵ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁶

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁷ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁰

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. . .²¹

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;

¹⁵ Directive, ¶ 3.2.

¹⁶ Directive, ¶ 3.2.

¹⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁸ Directive, Enclosure 3, ¶ E3.1.14.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ Directive, Enclosure 3, ¶ E3.1.15.

²¹ AG ¶ 18.

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

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.

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 maximum credit under AG ¶ 20(b). Her financial difficulties are due to circumstances largely beyond her control as follows: (1) serious health problems resulting in her discharge from the Navy due to disability; (2) continuation of her health problems resulting in her inability to work for the next five years; (3) her husband's period of unemployment after his discharge from the Navy; (4) her marital separation and divorce; (5) her period of underemployment before her current job; and (6) delay in establishment of a child-support order, which just commenced in January 2019. Plainly, these are circumstances largely beyond her control.

Moreover, I am persuaded that she acted like a reasonable person who was confronting a difficult situation. She left her husband who was unsupportive of her and then took a low-level job working for her parents while she sought out and found a better job. She also promptly pursued both child support and a divorce, but was delayed due to her husband's location in a distant state. Although she recently bought a car, a relatively new 2017 Hyundai can only be described as basic transportation and reasonable. With her current employment, retired pay, and the addition of monthly child support, Applicant is now in a position to do something about the delinquent debts, and I am persuaded that she will do so in due course.

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 she has 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: For Applicant

Subparagraphs 1.a -- 1.l: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant access to classified information. Eligibility granted.

Michael H. Leonard
Administrative Judge