



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



In the matter of:)
)
-----) ISCR Case No. 19-01123
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq. Department Counsel
For Applicant: *Pro se*

08/19/2020

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for access to classified information. She incurred delinquent debts due to financial hardship. She is making a reasonable and good-faith effort to repay her creditors. The evidence is sufficient to 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 May 4, 2018. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on April 23, 2019, 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 May 15, 2019. She admitted the factual allegations, she provided a three-page memorandum and supporting documentation, and she requested a hearing before an administrative judge.

The case was assigned to me on September 6, 2019. The hearing took place as scheduled on September 25, 2019. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-4. Applicant offered documentary exhibits, which were admitted as Exhibits A-K. Other than Applicant, no witnesses were called. The hearing transcript (Tr.) was received on October 7, 2019.

The record was kept open until October 16, 2019, to provide Applicant an opportunity to submit additional documentation. She made a timely submission, and the additional documents (along with the e-mail correspondence) are admitted without objections as Exhibit L.

Findings of Fact

Applicant is a 44-year-old employee who is seeking to obtain a security clearance for the first time. She works as a background investigator for a company in the defense industry. She has been so employed since September 2018. (Tr. 45) She earned an associate degree in 1995, a bachelor's degree in business administration and management in 1997, and a master's degree in business management in 2000. She is married and has three children, the first born in 2000 and twins born in 2005. Her husband was self-employed in the plumbing business until 2018, when he accepted a job with a municipality.

Before her current job, Applicant's employment history was a bit inconsistent or uneven. She worked as a master scheduler for a company during 2006-2011, when she departed due to the demands of raising twins. For the next several years she worked, without monetary compensation, as the office manager for her husband's plumbing business. Her hours were irregular, perhaps ten hours weekly. During this time, she decided to pursue a career in education as a teacher. She enrolled in a local university to obtain a teacher's certificate. She financed her attendance with two student loans in the amounts of \$9,000, loan date 09/01/2015, and \$12,500, loan date 10/28/2014, for a total of \$21,500. (Exhibit L at 4)

After Applicant obtained a teacher's certificate, she was unable to find a full-time job teaching. She worked part-time as a substitute teacher for the local school district during 2013-2018 earning about \$60 daily. (Tr. 32, 45) The income was not sufficient to allow her to maintain regular payments on her student loans, and she eventually defaulted. Per credit reports from 2018 and 2019, the loans had outstanding balances of \$5,385 and \$15,773, for a total of \$21,158, when placed for collection. (Exhibits 2 and 3)

The SOR alleged and Applicant admitted a history of financial problems. In addition to her admissions, factual allegations in the SOR are established by the documentary evidence. (Exhibits 2-4) The SOR concerns the two student loans mentioned above now in collection and two medical collection accounts in the amounts of \$1,186 and \$295.

Both student loans are in collection with the same creditor. (Exhibits A, B, C, D, G, H, I, and L) The balance on the account as of September 20, 2019, was \$17,497. The outstanding balance was reduced substantially in April 2019, when a federal income tax refund of \$6,365 was applied. Applicant entered into a payment arrangement with the creditor in about May 2019, when she agreed to make a monthly payment, initially \$366 and then reduced to \$143, beginning in June 2019, and she has made the payments as agreed.

Both medical collection accounts are in collection with the same creditor. (Exhibits E, F, G, H, I, and L) The accounts stem from emergency-room visits in 2012 and 2013. The balance on the account as of September 19, 2019, was \$986. Applicant entered into a payment arrangement with the creditor in about May 2019, when she agreed to make 12 monthly payments of \$124 beginning in June 2019, and she has made the payments as agreed.

Applicant attributed her delinquent debts to financial hardship brought about by a lack of income after she left her job as a master scheduler in 2011 in order to attend to family responsibilities. (Tr. 43; Answer to SOR) Her husband's plumbing business and her part-time work as a substitute teacher did not generate enough income to meet all their financial obligations. In addition, her ability to repay the delinquent debts was affected by expensive dental care incurred in 2019. (Exhibit K)

Applicant's overall financial situation has stabilized. A written budget she prepared reflects a positive net monthly remainder of about \$396. (Exhibit J) Her husband is now a salaried employee earning about \$54,000 annually. (Tr. 47-50) She is paid hourly and quarterly bonus pay. She estimated her 2019 gross income at about \$42,000. (Tr. 47-50) In addition, their financial assets consist of retirement accounts and about \$133,000 in home equity. (Tr. 51-54)

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.

It is well-established law that no one has a right to a security clearance.¹ 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.”² 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.³ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁵ Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁶

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 set forth in AG ¶ 18 as follows:

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. . . .

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,

¹ *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).

² 484 U.S. at 531.

³ 484 U.S. at 531.

⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁶ Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15.

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; and

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

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 disqualifying conditions noted above apply to this case.

Turning to the matters in mitigation, Applicant's financial problems are due to underemployment and unemployment, which, combined with her husband's irregular income as a self-employed plumber, resulted in financial hardship. She acted responsibly under the circumstances, as shown by her remedial actions in addressing the student loans and the medical collection accounts. Given the circumstances, the mitigating condition at AG ¶ 20(b) applies in Applicant's favor.

Applicant made a good-faith effort to resolve her delinquent financial accounts. She receives credit for entering into repayment arrangements with the creditor for the student loans and the creditor for the medical collection accounts. She is making progress in repaying the student loans and will pay off the medical collection accounts over the course of 12 monthly payments. Given the circumstances, the mitigating condition at AG ¶ 20(d) applies in Applicant's favor.

Applicant presented a good but less than perfect case in mitigation, but, as in all human affairs, perfection is not the standard. A security clearance case is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all the delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Here, I am persuaded that Applicant is making an honest effort to be financially responsible and repay her creditors. There are clear indications that her financial problems are under control. Her overall financial situation has improved with the benefit of her full-time employment and her husband's regular income as a salaried employee. It is probable that she will continue to make the agreed upon monthly payments and resolve outstanding debts. Taking everything into account, Applicant demonstrated good judgment, reliability, and trustworthiness by persevering under difficult circumstances. The financial considerations concern is mitigated.

Following *Egan* and the clearly consistent standard, I have no 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 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.d:	For Applicant

Conclusion

It is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility granted.

Michael H. Leonard
Administrative Judge