



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 20-01687
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Department Counsel
For Applicant: *Pro se*

07/01/2021

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 present sufficient evidence to explain, extenuate, or 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 June 20, 2019. (Exhibit 5) This document is commonly known as a security clearance application. She provided additional information when interviewed during a background investigation in 2019. (Exhibit 8) Thereafter, on January 11, 2021, after reviewing the available information, 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 February 10, 2021. Her answers were mixed with admissions and denials; she provided explanatory remarks; and she provided supporting documentation. She also requested a decision based on the written record in lieu of a hearing. In total, her answer consists of 21 pages.

On March 19, 2021, Department Counsel submitted a file of relevant material (FORM). It consists of Department Counsel's written brief and supporting documentation, some of which are identified as evidentiary exhibits herein. The FORM was mailed to Applicant on March 25, 2021; she received it on April 7, 2021. She timely replied to the FORM with a three-page memorandum and four documents, which are admitted as Exhibits A, B, C, D, and E.

The case was assigned to me on June 15, 2021. After initial review of Applicant's reply to the FORM, and in an abundance of caution, I contacted Applicant by telephone on June 21, 2021. The purpose of the call was to ask if she had any additional documentation she desired to present in her case. Applicant said she did not.

Findings of Fact

Applicant is a 33-year-old employee who is seeking eligibility for access to classified information for her job with a federal contractor. (Exhibit 5) She has a full-time job as a production and planning scheduler for a shipbuilding company. She has been so employed since February 2019. Before that, she had a part-time job as a server and bartender from August 2013 to February 2019. Before that, she had a full-time job as a customer-service representative from July 2013 to October 2013. And before that, she has a full-time job as a marketing crew member from January 2013 to July 2013. She also had a part-time job as a bartender during 2009-2013 when she was a college student.

Applicant has not held a security clearance in the past. (Exhibit 5 at Section 25) She has never married, and she has one child under the age of five. After high school, she attended a small, private college during 2006-2008. She withdrew after deciding to pursue a course of study not available at the private college. She then attended a large state university for the next several years during 2009-2013. She was awarded a bachelor's degree in May 2013.

The SOR alleges a history of financial problems consisting of 17 delinquent debts in amounts ranging from \$79 to \$32,271 for a total of more than \$130,000. Thirteen of the 17 delinquent debts are student loans placed in collection. She did not disclose delinquent debts or other financial issues in her June 2019 security clearance application. (Exhibit 5 at Section 26) Likewise, during her 2019 background investigation, she did not disclose delinquent debts or other financial issues until she was confronted during the interview process. (Exhibit 8 at 2) She explained that she

was unaware of those matters. (Exhibit 8 at 2-3) In her answer to the SOR, she admitted 14 of the delinquent debts.

The current status of the various accounts in the SOR is discussed below. In summary, Applicant has successfully resolved a retail collection account, three medical collection accounts, and two student loans. Ten student loans in collection are in the beginning stages of resolution. The 11th student loan in collection is wholly unresolved.

The \$274 past-due account with a balance of \$2,870 in SOR ¶ 1.a stems from a retail account. Applicant explained in her answer to the SOR that her mother opened the account in Applicant's name and she was unaware of it. In reply to the FORM, Applicant provided documentation that her mother assumed liability for the account with the creditor and the account is being resolved via a collection lawsuit. (Exhibit B) I find this account is resolved in Applicant's favor.

The three medical collection accounts for \$117, \$79, and \$154 in SOR ¶¶ 1.c, 1.d, and 1.e were unknown to Applicant until she learned about them during the security clearance process. She paid these debts in February 2021. (Answer at 7, 10) I find these accounts are resolved in Applicant's favor.

The remaining 13 delinquent accounts in the SOR are for student loans. First, in SOR ¶ 1.i, is a \$1,868 student loan in collection with a state educational assistance activity. Applicant's February 2021 credit report shows this account as a paid collection. (Answer at 8) I find this account is resolved in Applicant's favor.

Second, in SOR ¶ 1.j, is a \$3,805 student loan in collection with a state educational assistance activity. Applicant denied this debt in her Answer to the SOR. Department Counsel, in their brief in support of the FORM, conceded that the account appears to overlap with the allegation in SOR ¶ 1.f and is therefore not a valid separate allegation. I find this account is resolved in Applicant's favor due to duplication.

Third, in SOR ¶ 1.b, is a \$6,766 student loan in collection stemming from her attendance at the small, private college during 2006-2008. She disputes the debt as explained in her answer to the SOR. The debt is listed in an August 2019 credit report but not in a more recent March 2021 credit report. (Exhibits 7 and 6, respectively). Applicant provided a February 2019 letter from a collection agency seeking to collect a balance due of \$6,616 from her. (Answer at 17) She has not provided additional documentation to substantiate her dispute. I find this account is unresolved.

Fourth, in SOR ¶¶ 1.f, 1.g, and 1.h, are three student loans in collection with a state educational assistance activity in amounts of \$32,271, \$22,630, and \$13,209, respectively, for a total of about \$68,110. So far as I can determine, these three accounts are now in collection with the state attorney general's office.

A May 4, 2021 letter from that office indicates the loans are in default and are being pursued through a collection lawsuit. (Exhibit C) Applicant requested a repayment agreement, and was requested to complete certain paperwork for that process, which

the state would then review to determine if it is reasonable. Then, once the state obtains service upon Applicant and her sureties, the state would file a motion to set the case for hearing where the state would obtain a judgment against Applicant and her sureties, but would agree to not proceed to enforce the judgment so long as she complied with the repayment agreement. I find these loans are partially resolved.

Fifth, in SOR ¶¶ 1.k – 1.q, are seven student loans in collection with the U.S. Department of Education. The seven federal student loans total about \$53,437. With her answer to the SOR, Applicant provided documentation, dated December 2, 2020, showing that she started the process of rehabilitating the loans with a total balance of about \$63,117, which included substantial collection fees. (Answer at 11-16)

In her reply to the FORM, Applicant provided current information about the status of the loans. A February 11, 2021 letter from the Education Department states that the loans were transferred to them for servicing since Applicant successfully completed a loan-rehabilitation program. (Exhibit E) The total balance then due was about \$53,565 for the principal balance and outstanding interest. Applicant was further directed to determine an appropriate repayment option for her.

The next day, in a February 12, 2021 letter, the Education Department advised Applicant that her federal student loans were eligible for COVID-19 emergency relief measures. (Exhibit D) As a result, the seven federal student loans serviced by the Education Department were granted a 0% interest rate for the period March 13, 2020, at least through September 30, 2021, and the loans were placed in a payment suspension for the same period. I find these loans are partially resolved.

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

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

the burden of proof is less than a preponderance of evidence.³ The 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, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

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

AG ¶ 19(a) inability to satisfy debts; and

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

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

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

Applicant has not sufficiently explained, extenuated, or mitigated her history of financial problems. I have reviewed all of the mitigating conditions under Guideline F and conclude none are fully applicable. With that said, Applicant has resolved 6 of the 17 delinquent debts in the SOR, although three of the six debts are minor medical collection accounts. I find for Applicant on the six accounts.

Applicant has only partially resolved 10 of the remaining 11 student loans, all of which she defaulted. She now owes more than \$100,000 in total between the state educational assistance activity and the Education Department. She also has more than \$6,000 in collection for a student loan from her attendance at the small, private college, and that debt is wholly unresolved. It is also worth noting that the delinquent debts in the SOR had laid dormant and unaddressed until brought to Applicant's attention during the security clearance process. One wonders if she would have taken any remedial action on the indebtedness but for the scrutiny of the security clearance process.

For the three state loans, the collection lawsuit is pending, and Applicant is yet to begin a repayment plan. For the seven federal loans, Applicant successfully completed a loan-rehabilitation program and the loans are now in a type of forbearance for the next several months. But she will be required to begin a repayment plan in the near future. Compared with the length of time the student loans were in default (a period of years), it is simply too soon to tell if she will adhere to the repayment plans for the state and federal student loans.

Following *Egan* and the clearly consistent standard, I have doubts and 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 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c -- e:	For Applicant
Subparagraphs 1.f -- 1.h:	Against Applicant
Subparagraphs 1.i -- 1.j:	For Applicant
Subparagraphs 1.k -- 1.q:	Against Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge