



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



In the matter of:)) -----) a.k.a. -----)) Applicant for Security Clearance)	ISCR Case No. 20-03613
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Appearances

For Government: A. H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

11/30/2021

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for access to classified information. She did not present sufficient documentary 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, in April 2019. (Exhibit 2) The automated version of the SF 86 is the e-QIP. The SF 86 is commonly known as a security clearance application.

Applicant was interviewed during the course of a 2019 background investigation. (Exhibit 3) Thereafter, on February 20, 2021, after reviewing the available information, the DoD 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 in form and purpose to a complaint, which is the initial pleading that starts a civil action; in some states this pleading is known as a petition; and in criminal law it is a formal charge accusing a person of an offense. Here, the SOR detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR on March 10, 2021. She included numerous documents (Attachments A – E, so far as I can tell) with the answer. The attachments, as identified in her answer, are not marked and are not in sequence (again so far as I can tell). She requested a decision based on the written record in lieu of a hearing before an administrative judge.

On May 14, 2021, Department Counsel submitted a file of relevant material (FORM). It consists of Department Counsel's written brief and supporting documentation. The FORM was mailed to Applicant, who received it June 2, 2021. She replied to the FORM by way of a letter from an attorney who has represented Applicant as legal counsel in six civil disputes filed against her. The letter briefly discusses the status of each dispute. It is admitted as Exhibit A without objections. The case was assigned to me August 20, 2021.

Findings of Fact

Applicant is a 38-year-old employee who is seeking eligibility for access to classified information for her job as a senior systems engineer for a large company in the defense industry. She has been so employed since July 2019. (Exhibit 3) Her educational background includes a high school diploma awarded in 2001, an associate degree in 2003, and a bachelor's degree in December 2011. She has been married and divorced more than once with the last divorce in 2011. (Exhibits 2 and 3) She has two minor children from the marriages.

Applicant's employment history includes a number of jobs since obtaining her bachelor's degree in 2011. In reverse chronological order, she worked as a consulting engineer from August 2018 until July 2019, when she began his current job. Before that, she worked as a cloud administrator, project manager, and operations manager for about two years during 2016-2018. Before that, she worked as a senior IT consultant for less than a year during 2015-2016. Before that, she worked as a senior IT consultant for about two years during 2013-2015. Before that, she worked as a remote operations manager for less than six months during 2013. And before that, she worked as a IT manager for less than two years during 2011-2013.

Applicant's employment history also includes military service. She is an honorably discharged veteran of the U.S. Army after about seven months on active duty in 2008. She was separated before the end of her term of service due to a non-combat related disability after she suffered stress fractures in both feet. (Answer; Exhibit 3)

The SOR alleges a history of financial problems consisting of a Chapter 7 bankruptcy case discharged in 2012, and 11 delinquent accounts in amounts ranging from \$117 to \$10,359 for a total of about \$27,000. The delinquent accounts consist of a deficiency balance after repossession of an automobile, a charged-off account, and nine medical collection accounts. The bankruptcy is established by bankruptcy court records. (Exhibit 6) The delinquent accounts are established by a May 2019 credit report and a March 2020 credit report. (Exhibits 4 and 5) All these matters are discussed below.

Applicant's attributes the Chapter 7 bankruptcy case (SOR ¶ 1.l) to a divorce in 2011, which resulted in a loss of household income and she was unable to support herself and her two children. (Exhibit 3) The bankruptcy case followed in 2012, with the initial filing in April 2012, and the court granting her a discharge in September 2012. (Exhibit 6) The discharged liabilities were 24 unsecured debts for about \$26,000 in total.

The second largest delinquency in the SOR is a deficiency balance of \$9,981 after repossession in SOR ¶ 1.a. The March 2020 credit report describes it as an involuntary repossession with a current balance of \$9,981. (Exhibit 5) In her answer to the SOR, Applicant denied the allegation on the basis the account was paid in full and presented two documents in support thereof. (Answer at Attachment A) The documentation shows that a repossession of a 2008 Jeep occurred in December 2018, and the vehicle was sold at auction for a net amount of \$2,947. In the June 2021 attorney letter, the attorney advises that Applicant elected to settle the case directly and paid the debt in full resulting in satisfaction of a previously entered judgment. (Exhibit A) Applicant did not provide documentary proof of payment or a copy of the satisfaction of judgment. I find this account is unresolved.

The largest delinquency is a \$10,359 charged-off account in SOR ¶ 1.b. The March 2019 credit report describes it as a charged-off installment loan (auto) for \$10,359 on July 2017. (Exhibit 4) The more recent March 2020 credit report shows a balance of \$7,599. (Exhibit 5) In her answer to the SOR, Applicant denied the allegation on the basis that the amount owed is now \$2,699 with \$350 monthly payments. She explained it stems from a car loan she apparently co-signed with her father who passed away unexpectedly in March 2016. (Answer at Attachment B) In the June 2021 attorney letter, the attorney advises that Applicant settled the case agreeing to pay a total of \$9,000 in \$350 monthly installments; has paid \$7,000 per the agreement; and has a balance due of \$2,000 as of the date of the letter. Applicant did not provide documentary proof of payment or satisfaction of a settlement agreement or judgment. I find this account is unresolved.

Altogether, the nine medical collection accounts in SOR ¶¶ 1.c – k total about \$6,875. In the June 2021 attorney letter, the attorney advises, in paragraphs 4, 5, and 6, that Applicant has amicably resolved two collection lawsuits for unpaid residual medical bills as follows: (1) agreeing to pay \$4,293 in \$250 monthly installments beginning August 2021; and (2) agreeing to pay \$1,706 in \$150 monthly installments beginning in June 2021. (Exhibit A) A third collection lawsuit for residual medical bills in the amount of \$6,622 is pending while Applicant is attempting to correct a medical billing error with an insurance provider. (Exhibit A) Applicant did not provide documentary proof of

payment per the two installment agreements. Likewise, she did not provide documentation to establish the billing error she asserts is the basis of her dispute. I find the nine medical collection accounts are unresolved.

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 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

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

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.

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. Substantial evidence shows Applicant has about \$27,000 in delinquent accounts, which are unresolved and ongoing. The disqualifying conditions noted above apply.

An applicant lives in the real world and can expect real-world problems, such as a job loss. The security clearance process recognizes that bad things can happen to good people and has a certain tolerance for the possibility of human error and honest mistakes. But an applicant is still expected to keep their house in reasonable order. In financial cases, keeping their house in order includes providing a reasonable amount of documentation in support of their case to show whatever steps and remedial actions they are taking to resolve their financial problems. The security clearance process, like other large bureaucratic institutions such as banks, hospitals, universities, and insurance companies, does not run on word-of-mouth. It runs on documentation.

Applicant has not sufficiently explained, extenuated, or mitigated her history of financial problems. I have reviewed the mitigating conditions under Guideline F and conclude none are fully applicable. With that said, I am not concerned about the 2012 Chapter 7 bankruptcy case because it happened nearly a decade ago and was the result of a divorce. Applicant has not remarried since her last divorce in 2011. The bankruptcy is no longer a present concern.

The same cannot be said for the remaining \$27,000 in delinquent accounts. Of some concern here are the implications of the numerous collection lawsuits (six during

2018-2021) brought against Applicant as outlined in the June 2021 attorney letter. The number of lawsuits suggests a measurable degree of financial irresponsibility or instability or both. Concerning her various claims of repayment, the June 2021 attorney letter is helpful information but by itself not sufficient to fully credit Applicant. What is missing here should be obvious; namely, documentation to establish proof of payment. In short, Applicant has not provided sufficient documentary evidence to establish her claims of payment made to her various creditors as well as the current status of her debts. Accordingly, she does not receive the benefit of mitigation under AG ¶ 20(d).

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
Subparagraphs 1.a – 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge