



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



In the matter of:)
)
 -----¹) ISCR Case No. 21-01412
)
 Applicant for Security Clearance)

Appearances

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

04/22/2022

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for access to classified information due to a history of financial problems, which includes noncompliance with federal and state income tax obligations. She did not present sufficient documentary evidence to 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 July 2020. (Exhibit 4) The automated version of the SF 86 is the e-QIP. The SF 86 is commonly known as a security clearance application.

¹ Per the SF 86, the SOR misspelled Applicant’s first name, which is corrected here.

Applicant was interviewed during the course of a 2020 background investigation. (Exhibit 7) Thereafter, on September 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 about three months later in December 2021.² She admitted all the factual allegations in the SOR without further explanation. She did not provide supporting documentation. She also stated that she wished to have an administrative judge issue a decision based on the written record in lieu of a hearing.

On January 18, 2022, 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 January 25, 2022. She did not reply to the FORM. The case was assigned to me March 22, 2022.

Findings of Fact

Applicant is a 31-year-old employee who is seeking to obtain a security clearance. She has a job as a publications coordinator with a company in the defense industry. She has been so employed since March 2019. Before that, she had full-time employment as a customer service representative during 2014-2019. She has also had short-term part-time jobs (e.g., cashier, crew member) during 2014 and 2017. Her educational background includes attendance at a state university during 2009-2011 and at a community college during 2012. Neither resulted in a degree or certificate. She has never married. She has two minor children.

The SOR concerns a history of financial problems, which includes noncompliance with federal and state income tax obligations. The SOR alleged, and Applicant admitted, failure to file, as required, federal and state income tax returns for multiple tax years; namely, 2015 through 2020. The SOR also alleged, and Applicant admitted, 12 delinquent debts in the total amount of about \$15,860. The indebtedness consists of two federal student loans in collection (although likely now in deferment due to the ongoing pandemic), three charged-off consumer accounts, two consumer accounts in collection, and five medical collection accounts. In addition to her admissions, these matters are established by disclosures in her SF 86 as well as credit reports from 2020 and 2021. (Exhibits 4, 5, and 6)

² An applicant's answer must be received by DOHA within 20 days of receipt of the SOR, and if not, processing of the case may be discontinued. Directive, Enclosure 3, ¶¶ E3.1.4 and E3.1.5.

Applicant made various statements during the 2020 background investigation to explain her claim of financial hardship. (Exhibit 7) But she has not provided documentation to verify and corroborate those statements. Nor has she provided documentary proof that she is now in compliance and good standing with federal and state tax authorities by filing her past-due tax returns for multiple tax years. Likewise, she has not provided documentary proof that any of the 12 delinquent debts were paid, settled, in a repayment agreement, disputed, cancelled, forgiven, or otherwise 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.³ 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.”⁴ 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.⁵

The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.⁶ Substantial evidence means “evidence that a reasonable mind could accept as adequate to support a conclusion; evidence beyond a scintilla.”⁷ Substantial evidence is a lesser burden than both clear and convincing evidence and preponderance of the evidence, the latter of which is the standard applied in most civil trials. It is also a far lesser burden than evidence beyond a reasonable doubt, the norm for criminal trials.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁸ Under the Directive, the parties have the following

³ *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).

⁴ 484 U.S. at 531.

⁵ 484 U.S. at 531.

⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁷ *Black’s Law Dictionary* 640 (Bryan A. Garner ed., 9th ed., West 2009).

⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

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.⁹

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 and mitigating conditions as most pertinent:

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

AG ¶ 19(f) failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required;

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(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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 here.

⁹ Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15.

In addressing this issue, I note that an applicant's failure to timely file tax returns and pay tax when due bears close examination and is a matter of serious concern to the federal government. The DOHA Appeal Board has made it clear that an applicant who fails repeatedly to fulfill their legal obligations, such as filing tax returns and paying tax when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See ISCR Case No. 15-06707 at 3 (App. Bd. Aug. 15, 2017).

To her credit, Applicant disclosed her income-tax problems and other financial problems in her 2020 security clearance application, and she provided information during the background investigation. But the evidence does not support a conclusion that she has engaged in sufficient remedial efforts. Indeed, she has not presented any documentary evidence in support of her case. She is still in noncompliance with federal and state tax authorities, and her 12 delinquent accounts remain unresolved. The mitigating conditions noted above do not apply here.

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.n:	Against 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