



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



In the matter of:)
)
-----) ISCR Case No. 20-01444
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

04/27/2022

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. 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 October 2018. (Exhibit 3) 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 4) Thereafter, on October 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 in December 2021. Her answers were mixed; she admitted one allegation; and she denied the remaining allegations. She did not provide supporting documentation. She also requested a clearance decision based on the written record in lieu of a hearing.

On January 10, 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 24, 2022. She did not reply to the FORM. The case was assigned to me March 22, 2022.

Findings of Fact

Applicant is a 46-year-old employee who is seeking to obtain a security clearance. This is the first time she has applied for a security clearance; she was granted an interim clearance at the secret level in November 2018. (Exhibit 8) She has a job as a technician with a company in the defense industry. She has been so employed since October 2018. Before that, she had full-time employment with various employers dating back to March 2004. She had a three-month period of unemployment between jobs in 2014. Her educational background includes a high school diploma awarded in 1995. Never married, she has four children, born in 1998, 2001, 2005, and 2007.

The SOR concerns a history of financial problems consisting of 13 delinquent accounts in amounts ranging from \$551 to \$5,797 for a total amount of about \$27,000. The indebtedness consists of five charged-off accounts, four collection accounts, and four medical collection accounts. The largest debts appear to be charged-off credit card accounts. In her answer to the SOR, she denied 12 of the 13 accounts, explaining simply that she did not make those accounts. During her 2019 background investigation, upon confrontation, she admitted numerous delinquent accounts. (Exhibit 4 at 5) She also explained that she did not recall reading the financial questions when completing the SF 86; she did not bring the accounts up because she did not know the details; and she knew she had bad credit. The 13 delinquent accounts are established by credit reports from 2018, 2019, and 2022. (Exhibits 7, 6, and 5, respectively)

Other than the various statements made during the 2019 background investigation, Applicant has not provided affirmative proof, via reliable documentation, that she has resolved any of the 13 delinquent accounts. In particular, she has not

provided documentary proof that any of the 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.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 Substantial evidence means “evidence that a reasonable mind could accept as adequate to support a conclusion; evidence beyond a scintilla.”⁵ 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.⁶ 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.⁷

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

⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁷ Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15.

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.

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.

The evidence before me does not support a conclusion that Applicant has engaged in sufficient remedial efforts to justify a favorable clearance decision. She has not presented any documentary evidence in support of her case. Her 13 delinquent accounts remain wholly unresolved. None of the mitigating conditions listed in AG ¶ 20 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.m: 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