



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



In the matter of:)
)
-----) ISCR Case No. 21-02287
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

06/22/2022

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 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 March 2021. (Exhibit 4) 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 2021 background investigation. (Exhibit 5) Thereafter, on October 27, 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. 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 February 14, 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 March 15, 2022. She replied to the FORM on April 14, 2022. She submitted a single document, 14 pages in length, along with an accompanying e-mail. Together, they are made part of the record, without objection, as Exhibit A. The case was assigned to me June 3, 2022.

Findings of Fact

Applicant is a 45-year-old employee who is seeking to obtain a security clearance for the first time. She has a job as a technical support analyst. She has been so employed since 2019. Her educational background includes a bachelor's degree awarded in 1998. She is married and has three children; an adult child; and two minor children from the marriage.

The SOR concerns a history of financial problems, which includes noncompliance with federal income tax obligations. The SOR alleged, and Applicant admitted, back taxes owed to the IRS in the total amount of approximately \$146,733 for the consecutive tax years of 2012-2018. In addition to her admissions, the back taxes are established by information she provided in her security clearance application and copies of notices of federal tax liens for the tax years in question. (Exhibits 4 and 9) In her security clearance application, she stated the back taxes resulted from lack of sufficient money. She also indicated she was paying \$800 monthly per a repayment plan or installment agreement with the IRS. She made a similar statement during the background investigation. (Exhibit 5) She did not provide documentation to establish a repayment plan or installment agreement with the IRS.

In reply to the FORM, Applicant submitted a 14-page client-services agreement she and her spouse entered into in January 2022. (Exhibit A) The agreement is with a firm that specializes in helping taxpayers obtain relief from federal and state tax authorities. The scope of the agreement limits the initial service to conducting an investigation of Applicant's master file from the IRS and an analysis of financial information provided by Applicant and her spouse to determine a final resolution plan

and provide a recommendation for tax compliance. At this point, there is no record evidence of further activity or action by the tax-relief firm on behalf of Applicant and her spouse. The back taxes of approximately \$146,733, and the associated federal tax liens, are unresolved.

In addition to the back taxes, the SOR alleged an unpaid judgment for \$3,632, which was filed against Applicant in 2020. She admitted the unpaid judgment in her answer to the SOR. In addition to her admission, the unpaid judgment is established by credit reports and court records. (Exhibits 6, 7, and 8) The judgment stems from a credit card account that went into collection. She explained during the background investigation that she stopped paying the credit card account because she felt that she could not make progress in reducing the balance due to a high interest rate. (Exhibit 5) She also expressed an intention to settle the account with the judgment creditor. At this point, there is no record evidence that the account was settled or otherwise resolved.

The SOR also alleged four charged-off student loans in the total amount of approximately \$86,000. She admitted the four charged-off student loans in her answer to the SOR. In addition to her admissions, the loans are established by credit reports. (Exhibits 6 and 7) She explained during the background investigation she cosigned the loans for her eldest daughter. (Exhibit 5) The loans became delinquent when her daughter stopped making the required payments, and Applicant did not wish to make the loan payments. She further stated she intends to satisfy the student loans via a payment plan that had yet to be established and estimated completion of the plan by 2028. She did not provide documentation to establish a repayment plan for the loans.

In summary, Applicant did not provide documentary proof that she has made arrangements with the IRS to pay the substantial amount owed and is in compliance with those arrangements. Likewise, she did not provide documentary proof that the unpaid judgment and four charged-off student loans 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

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).

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

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

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.

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(a) an inability to satisfy debts;

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 sufficient to raise a security concern under Guideline F. The disqualifying conditions noted above apply here.

In addressing the main issue of this case, I note that an applicant's failure to timely file tax returns or pay tax when due (or both) 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 or 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 in her 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. The documentary evidence (Exhibit A) shows she and her spouse have merely taken the initial first step toward rehabilitation, but they have miles to go before they reach the destination of compliance with the IRS. The other delinquent debts are also unresolved, and there are not realistic plans in place to resolve them.

Nearly \$150,000 in back taxes owed to the IRS is a serious matter. The other delinquent debts are considered to be evidence in aggravation. Based on the evidence, 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