



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 12-05269
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

02/04/2014

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny her a security clearance to work in the defense industry. She did not present sufficient evidence to mitigate the financial considerations security concern stemming from a delinquent student loan. Accordingly, this case is decided against Applicant.

Statement of the Case

On or about October 29, 2013, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant or continue access to classified

information.¹ The SOR is similar to a complaint, and it detailed the reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR on November 8, 2013. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

Thereafter, on November 27, 2013, Department Counsel submitted all relevant and material information that could be adduced at a hearing.³ This so-called file of relevant material (FORM) was mailed to Applicant, who received it December 5, 2013. She did not reply within the 30-day period allowed under the Directive. The case was assigned to me January 31, 2013.

Ruling on Procedure

As detailed in the FORM, Department Counsel's motion to amend the single allegation, SOR ¶ 1.a, so it conforms with the evidence, is granted as follows:

You are indebted to [a creditor] on an educational loan that is past due in the approximate amount of \$1,670 with a loan balance of approximately \$20,863.

Findings of Fact

Applicant is a 30-year-old employee who is seeking to obtain a security clearance. Her employment history includes working as a part-time server in the restaurant industry during 2006–2007. Before that, she worked as a part-time secretary for a trucking company during 2001–2006. Her educational background includes earning a certificate from a vocational, technical, or trade school during 2006–2007. Since then, she has been continuously employed as a draftsman for a major defense contractor. She is married with one child born in 2009.

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² Directive, Enclosure 3, ¶ E3.1.7.

³ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which may be identified as evidentiary exhibits in this decision.

According to Applicant's June 2013 security clearance application,⁴ this is not the first time she has applied for a security clearance. She reported that a clearance was denied in 2007 or 2011 or both for circumstances that are unclear.⁵

There is substantial evidence to support the SOR allegation that Applicant has a past-due student loan. Two credit reports from 2013 establish that Applicant obtained a student loan in May 2006 with a high credit of \$20,804,⁶ which I presume she used to pay for her schooling during 2006–2007. The most recent credit report from October 2013 notes that the account is 180 days or more past due in the amount of \$1,670 with a loan balance of \$20,863.⁷

Applicant disclosed the past-due student loan in her security clearance application.⁸ She stated that she made payments on the loan, but the balance nonetheless increased; she stated that she tried talking with the creditor without success so she stopped payment and told the creditor she intended to hire a lawyer; and she stated that she has since received no communication from the creditor. In her answer to the SOR, she did not dispute the debt and expressed a willingness to settle it. To date, Applicant has not presented any documentary evidence showing she has paid, settled, entered into a repayment agreement, disputed, or otherwise resolved the past-due student loan.

In addition to the past-due student loan, the October 2013 credit report notes a \$489 medical collection account that is unpaid but disputed by Applicant.⁹ Presumably, it was not alleged in the SOR because it is in dispute, and so, I will not hold it against Applicant. Otherwise, there is no other adverse information in that report.

The totality of the documentary evidence before me consists of Applicant's security clearance application and two credit reports, which were mentioned above. Given these circumstances, I am unable to make any findings about Applicant's overall financial situation, such as: annual income; monthly income, expenses, and any remainder; financial assets; and ability to repay or settle the past-due student loan. Likewise, I am unable to making any findings about whether Applicant has a good employment record with her defense-contractor employer.

⁴ Exhibit 4.

⁵ Exhibit 4 at 35 of 40.

⁶ Exhibits 5 and 6.

⁷ Exhibit 5 at 1.

⁸ Exhibit 4 at 37–38 of 40.

⁹ Exhibit 5 at 1.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁰ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ 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.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹² An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁴ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁷ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁸ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁹

The AG set forth the relevant standards to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense

¹⁰ *Department of 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).

¹¹ 484 U.S. at 531.

¹² Directive, ¶ 3.2.

¹³ Directive, ¶ 3.2.

¹⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁵ Directive, Enclosure 3, ¶ E3.1.14.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ *Egan*, 484 U.S. at 531.

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

decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.²⁰ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

Under Guideline F for financial considerations,²¹ 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.²² The overall concern is:

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 information.²³

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information within the defense industry.

Applicant's unfavorable financial history indicates inability or unwillingness to satisfy debts²⁴ and a history of not meeting financial obligations.²⁵ The facts are more than sufficient to establish these disqualifying conditions.

²⁰ Executive Order 10865, § 7.

²¹ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²² ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

²³ AG ¶ 18.

²⁴ AG ¶ 19(a).

²⁵ AG ¶ 19(c).

There are six mitigating conditions under Guideline F.²⁶ I have considered all six in light of the facts and circumstances here, and none, individually or in combination, apply in a sufficient manner to mitigate the security concern.

Typically, I would not attach much importance to a single delinquent account that is past due for less than \$2,000. I would usually view such a debt as relatively minor and not significant enough to justify an unfavorable clearance decision. But that is not the case here.

For starters, the nature of the debt is an important consideration. A student loan debt, much like income taxes and child support, has a higher sense of obligation or priority compared with unsecured consumer debt.

In addition, the credit reports show the debt has been past due a long time, more than 180 days. This suggests Applicant has been taking an out-of-sight, out-of-mind approach to the debt.

Next, I am not impressed with Applicant's minimal response in this proceeding. Her answer to the SOR was a brief one-sentence reply along with a request for a decision without a hearing. And she did not respond to the FORM. Her unwillingness, inattention, or inability to document her stated intention to settle the past-due student loan militates against a favorable clearance decision.

With that said, a security clearance case is not aimed at collecting debts or enforcing tax laws.²⁷ Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the security guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement

²⁶ AG ¶¶ 20(a)-(f).

²⁷ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.²⁸

Based on the available evidence, Applicant has not taken enough significant actions to mitigate the security concern under Guideline F. In light of the facts and circumstances here, the record evidence presents uncertainty, and that uncertainty equates to doubt about Applicant. Given that doubt, I am not persuaded that she will resolve the past-due student loan account in the foreseeable future.

After weighing the relevant disqualifying and mitigating conditions and evaluating the evidence in light of the whole-person concept,²⁹ I conclude Applicant did not present sufficient evidence to explain, extenuate, and mitigate the security concern. Accordingly, Applicant 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 as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraph 1.a:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge

²⁸ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

²⁹ AG ¶ 2(a)(1)–(9).