



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 12-06978  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

11/21/2015

**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 has a history of financial problems or difficulties consisting of about \$27,000 in unpaid judgments or collection accounts, which are largely unresolved and ongoing. She did not present sufficient evidence to rebut, extenuate, mitigate, or explain her problematic financial history. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on February 29, 2012.<sup>1</sup> After reviewing the application and information gathered during a background investigation, the Department of Defense

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<sup>1</sup> Exhibit 1 (this document is commonly known as a security clearance application).

(DOD),<sup>2</sup> on January 3, 2015, 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.<sup>3</sup> The SOR is similar to a complaint. It detailed the reasons for the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR in a two-page memorandum on or about March 2, 2015. Her answer was mixed; she admitted some of the delinquent accounts; she denied others; and she provided explanations.

The case was assigned to me on July 8, 2015. The hearing was held as scheduled on July 29, 2015. Department Counsel offered Exhibits 1–5, and they were admitted. Applicant offered Exhibits A–C, and they were admitted. No witnesses were called other than Applicant. The hearing transcript (Tr.) was received on August 6, 2015.

The record was kept open for two weeks until August 12, 2015, to provide Applicant an opportunity to submit additional documentary information. No such information was received.

### **Ruling on Procedure**

It appears that the collection account in SOR ¶ 1.h is the same as the unpaid judgment in SOR ¶ 1.b. Accordingly, SOR ¶ 1.h is decided for Applicant because of the duplication.

### **Findings of Fact**

Applicant is a 34-year-old employee who is seeking to obtain a security clearance for the first time. She is employed as a system integration engineer for a large defense contractor. She has worked for that company since 2012. Her educational background includes a bachelor's degree in information science and technology awarded in 2011. She is engaged to be married, and she and her fiancé have a daughter born in 2014.

Applicant has a history of financial problems or difficulties. The SOR allegations consist of three unpaid judgments for a total of \$13,544 and six collection accounts ranging in amounts from \$404 to \$9,843 for a total of about \$14,035. Her problematic

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<sup>2</sup> The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

<sup>3</sup> 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.

financial history is established by her admissions and the credit reports from 2012, 2014, and 2015.<sup>4</sup>

At the hearing, Applicant presented documentary proof of the following three matters: (1) she settled the \$669 collection account in SOR ¶ 1.f for \$221 in June 2014; (2) she settled the \$629 collection account in SOR ¶ 1.d for \$100 in February 2012; and (3) she paid a \$90 medical collection account not alleged in the SOR in July 2015.<sup>5</sup> She had no documentary evidence that the remaining delinquent accounts in the SOR were paid, settled, in repayment, in dispute, cancelled, forgiven, or otherwise resolved.

Applicant attributed her problematic financial history to several circumstances. First, she pointed to a long-time relationship, which she described as a really bad relationship, that ended in about 2005 during which she and her then boyfriend incurred indebtedness for the boyfriend's small business. When they separated, they agreed to split responsibility for the debts, but the boyfriend did not keep his word.<sup>6</sup> Second, after the separation, she was attending college and was unable to address past debts due to college expenses and limited income. Third, more recently, she has not been able to address the past debts due to student loans and current bills.<sup>7</sup> Fourth, she was financially naive and did not understand the topics of personal finance, legal judgments, and collection accounts, and she did not appreciate the importance of keeping one's financial house in good order.<sup>8</sup>

Applicant's earns an annual salary of about \$68,000.<sup>9</sup> She has a 401(k) account with a balance of about \$20,000.<sup>10</sup> She has checking and savings accounts with a combined balance of a few thousand dollars.<sup>11</sup> She described her financial situation as "great" in that she is meeting all her current expenses.<sup>12</sup> At present, she and her fiancé are keeping their finances separate,<sup>13</sup> although they have joint debts. A July 2015 credit report on Applicant shows the following: (1) a \$29,597 auto loan opened in March 2014

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<sup>4</sup> Exhibits 3–5.

<sup>5</sup> Exhibits A, B, and C.

<sup>6</sup> Tr. 24–26, 35–38.

<sup>7</sup> Answer to SOR at 2.

<sup>8</sup> Tr. 48.

<sup>9</sup> Tr. 38.

<sup>10</sup> Tr. 38–39.

<sup>11</sup> Tr. 39.

<sup>12</sup> Tr. 37–38.

<sup>13</sup> Tr. 37 ("He pays for his stuff. I pay for my stuff.")

to buy a used BMW sedan; (2) a \$40,441 auto loan opened in March 2014 to buy a used Cadillac SUV; and (3) a revolving account with a jewelry store with a high credit of \$8,073 opened in January 2015 to buy an engagement ring.<sup>14</sup>

Applicant consulted two different lawyers in 2013 and 2014, and she was advised not to contact the creditors for her past debts unless she was able to offer a reasonable settlement. She was also advised that some of her debts may be unenforceable under an applicable statute of limitations, a position she asserted in her answer to the SOR for the debts in SOR ¶¶ 1.e, 1.g, and 1.i. She has not contacted a financial advisor for assistance nor has she sought the services of a debt-consolidation firm.<sup>15</sup> Her plan going forward is to save enough money and then approach a creditor with a lump-sum settlement offer.<sup>16</sup>

### Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>17</sup> 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.”<sup>18</sup> 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.<sup>19</sup> An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>20</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>21</sup> The Government has the burden of presenting

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<sup>14</sup> Exhibit 5; Tr. 41–43, 45–46.

<sup>15</sup> Tr. 57–58.

<sup>16</sup> Tr. 60–61.

<sup>17</sup> *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 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>18</sup> 484 U.S. at 531.

<sup>19</sup> Directive, ¶ 3.2.

<sup>20</sup> Directive, ¶ 3.2.

<sup>21</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

evidence to establish facts alleged in the SOR that have been controverted.<sup>22</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>23</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>24</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>25</sup> The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>26</sup>

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 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.<sup>27</sup> 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,<sup>28</sup> 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.<sup>29</sup> 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

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<sup>22</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>23</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>24</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>25</sup> *Egan*, 484 U.S. at 531.

<sup>26</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>27</sup> Executive Order 10865, § 7.

<sup>28</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>29</sup> 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).

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.<sup>30</sup>

The concern is broader than the possibility that a person might knowingly compromise classified 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 information.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. Taken together, the evidence indicates inability or unwillingness to satisfy debts<sup>31</sup> and a history of not meeting financial obligations<sup>32</sup> within the meaning of Guideline F.

In mitigation, I have considered six mitigating conditions under Guideline F,<sup>33</sup> and I have considered the following as most pertinent:

AG ¶ 20(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or death, divorce, or separation), and the [person] acted responsibly under the circumstances.

Applicant's problematic financial history is likely related to the combination of circumstances noted in the findings of fact. Those circumstances are understandable and they are not frivolous. Nevertheless, the available evidence does not show that she acted responsibly under the circumstances. She has done little to address the delinquent accounts in the SOR, as shown by the \$411 paid to resolve the three accounts noted in the findings of fact. In the meantime in 2014, she, along with her fiancé, incurred about \$70,000 in debt to buy two used but high-end automobiles. And in 2015, they incurred about \$8,000 more in debt to buy an engagement ring. Those purchases are difficult to understand and reconcile in light of her more than \$20,000 in delinquent debt. Simply put, those purchases do not pass the commonsense test.

Concerning Applicant's reliance on a state statute of limitations, the evidentiary record is not sufficient to make a determination one way or the other given that basically nothing is known about the contractual terms Applicant agreed to with her various creditors. Regardless, the caselaw on statutes of limitation is well settled as recently stated by the Appeal Board:

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<sup>30</sup> AG ¶ 18.

<sup>31</sup> AG ¶ 19(a).

<sup>32</sup> AG ¶ 19(c).

<sup>33</sup> AG ¶ 20(a)–(f).

Security clearance decisions are not controlled or limited by statutes of limitation. A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Accordingly, even if a delinquent debt is legally unenforceable under state law, 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.<sup>34</sup>

Accordingly, Applicant's reliance on a state statute of limitations is misplaced and does not provide her any relief or defense in this federal administrative law proceeding.

In evaluating an applicant's judgment, reliability, and trustworthiness in Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a 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 that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>35</sup>

Here, the evidence does not support a conclusion that Applicant has established a plan and taken steps to implement that plan sufficient to mitigate the concern. The payments she has made to date are too minor to establish a track record of progress showing a favorable upward trend. Instead, the available evidence shows that Applicant's problematic financial history is ongoing, as it has been for many years.

Given those circumstances, Applicant's history of financial problems creates doubt about her reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice*

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<sup>34</sup> ISCR Case No. 14-03991 (App. Bd. Jul 17, 2015) (citation omitted).

<sup>35</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

*versa*. I also gave due consideration to the whole-person concept.<sup>36</sup> Accordingly, I conclude that she did not meet 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant

### **Conclusion**

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

Michael H. Leonard  
Administrative Judge

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<sup>36</sup> AG ¶ 2(a)(1)–(9).