



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



In the matter of:)	
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)	ISCR Case No. 12-08633
Applicant for Security Clearance)	

Appearances

For Government: Douglas Velvel, Esq., Department Counsel
For Applicant: *Pro se*

06/20/2016

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke her eligibility for access to classified information. She had financial problems leading to a home foreclosure in 2008 due to a combination of her husband’s unexpected job loss in 2007, and her husband’s abandonment of their marriage in 2008. She met her burden to present sufficient evidence to explain and mitigate the financial considerations security concern. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on February 17, 2012.¹ More than two years later on November 7, 2014, after reviewing the application and information gathered during a

¹ Exhibit 1 (this document is commonly known as a security clearance application).

background investigation, the Department of Defense (DOD)² 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.³ 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. She answered the SOR on December 18, 2014, and requested a hearing.

The case was assigned to me on October 28, 2015. The hearing was held as scheduled on January 6, 2016. The transcript of the hearing (Tr.) was received on January 13, 2016.

The record was kept open to allow Applicant to submit additional documentation. She made two separate post-hearing submissions, and those matters are admitted without objections as Exhibits S–V.

Findings of Fact

Applicant is a 57-year-old senior consultant who works in planning and coordinating meetings and events. Her education includes a bachelor's degree in education awarded in 1982. She married in 1987, although she and her husband separated and have lived apart since 2008. She has one adult child from the marriage. She intends to seek a divorce in the near future.

Applicant has worked for her current employer or its successor-in-interest since 2006.⁴ Before that, she worked as an executive assistant and officer manager from March 2000 to February 2006. In between those two periods, she was unemployed from February 2006 to September 2006 for about nine months. Her unemployment resulted from a job layoff due to the company going out of business.

Applicant presented substantial evidence of a good employment record as well as her good character and suitability for a security clearance.⁵ In September 2015, she received the Director's Award for Excellence for her exemplary teamwork in preparing,

² 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.

³ 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).

⁴ Exhibit 1.

⁵ Exhibits D, E, F, G, H, I, J, K, L, M, N, P, and R.

planning, and execution of a major meeting.⁶ A recent job performance appraisal gave her an overall rating of exceeds expectations, which is the highest rating available.⁷ In addition, Applicant's supervisor submitted a strong letter of recommendation in which she stated that she has "consistently seen [Applicant] demonstrate good judgment, a strong moral character, and highly responsible behavior."⁸

Under Guideline F, the SOR alleges that Applicant has the following delinquent financial accounts: (1) a \$97,273 charged-off account stemming from a home foreclosure; (2) two medical collection accounts, with unnamed creditors, for \$86 and \$38; and (3) three collection accounts for \$1,153, \$717, and \$828 owed to a homeowner's association (HOA). Applicant disclosed defaulted mortgage loans in her 2012 security clearance application; she admitted owing the six delinquent accounts in her answer to the SOR; and the six debts are established by credit reports from 2012 and 2014.⁹

Applicant and her husband purchased a home in early 2005 for about \$500,000. They financed the transaction with two mortgage loans for \$392,000 and \$99,941.¹⁰ The lesser of the two loans is now alleged in SOR ¶ 1.a. Both mortgage loans went into default after her husband's unexpected job loss in 2007. To this day, Applicant does not know the reason for her husband's job loss.¹¹ Her husband's job loss led to the breakdown of the marriage. Indeed, Applicant explained that, "[e]verything just went downhill from there. My husband just lost his mind, I guess, or just sunk to [a] low. I'm sure this affected him because he left the house."¹²

Applicant's husband had been the primary breadwinner and managed the household finances. He did not leave contact information, and he did not provide financial support to Applicant or their son who was still at home at the time. She attempted to work with the mortgage lenders, but was unsuccessful in modifying the mortgage loans. She moved out of the house and into an apartment, her current residence,¹³ in about September 2008, and the home was foreclosed upon. The primary mortgage loan was redeemed by the foreclosure, and the 2012 credit report shows a \$0

⁶ Exhibit P at 12.

⁷ Exhibit D.

⁸ Exhibit N.

⁹ Exhibits 1, 3, and 4.

¹⁰ Tr. 63–65; Exhibit 3.

¹¹ Tr. 45–46.

¹² Tr. 46.

¹³ Exhibit B.

balance.¹⁴ The lesser mortgage loan was not redeemed by the foreclosure. It was transferred or sold to another lender with a balance of \$97,273, and then eventually charged off.¹⁵

The two medical collection accounts for \$86 and \$38 are unresolved.¹⁶ Applicant presented documentation showing payment of two medical bills in 2014 and 2012, respectively.¹⁷ The account numbers in the documentation do not match and are not similar to the account numbers in the 2014 credit report.¹⁸

The three collection accounts for \$1,153, \$717, and \$828 owed to an HOA are for a time-share property owned outright by Applicant and her husband.¹⁹ The collection accounts are for maintenance fees or dues. The accounts are unresolved.

Applicant is resolving her indebtedness by seeking relief in bankruptcy court. She retained a bankruptcy attorney before the hearing in this case.²⁰ Subsequently, on January 11, 2016, a Chapter 7 petition was filed, the creditors meeting occurred on February 8, 2016, and a discharge of Applicant's dischargeable debts should be granted within 60 days of the meeting.²¹

Law and Policies

It is well-established law that no one has a right to a security clearance.²² 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."²³ 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.

¹⁴ Exhibit 3 at 5.

¹⁵ Exhibit 3 at 7; Exhibit 4 at 1.

¹⁶ Tr. 67–68.

¹⁷ Exhibits S and T.

¹⁸ Exhibit 4.

¹⁹ Tr. 59–60.

²⁰ Exhibit A.

²¹ Exhibits U and V.

²² *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).

²³ 484 U.S. at 531.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.²⁴ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁹

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³⁰ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.³¹

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.³² Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

²⁴ Directive, ¶ 3.2.

²⁵ Directive, ¶ 3.2.

²⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁷ Directive, Enclosure 3, ¶ E3.1.14.

²⁸ Directive, Enclosure 3, ¶ E3.1.15.

²⁹ Directive, Enclosure 3, ¶ E3.1.15.

³⁰ *Egan*, 484 U.S. at 531.

³¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

³² Executive Order 10865, § 7.

Discussion

Under Guideline F for financial considerations,³³ 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.³⁴ 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.³⁵

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 as well as an inability to satisfy debts.³⁶ That conclusion is supported by the defaulted mortgage loans leading to the home foreclosure, the two medical collection accounts, and the three collection accounts owed to the HOA. With that said, I have given little weight to the medical collection accounts. The amounts at issue, \$86 and \$38, are minor if not puny. It is also presumed that the medical expenses were incurred for necessary medical care as opposed to frivolous or irresponsible spending, consistent spending beyond one's means, or financial problems that are linked to issues of security concern.

In mitigation, I have considered the six mitigating conditions under Guideline F,³⁷ and the following are most pertinent:

AG ¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not

³³ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

³⁴ 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).

³⁵ AG ¶ 18.

³⁶ AG ¶¶ 19(a) and (c).

³⁷ AG ¶ 20(a)–(f).

cast doubt on the [person's] current reliability, trustworthiness, or good judgment;

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 a death, divorce, or separation), and the [person] acted responsibly under the circumstances; and

AG ¶ 20(c) [t]here are clear indications that the problem is being resolved or is under control.

Applicant receives credit under all three of the mitigating conditions mentioned above. The evidence shows her financial problems date back to the 2007–2008 period. The home foreclosure in 2008 was due to a combination of her husband's unexpected job loss in 2007, and her husband's abandonment of their marriage in 2008. Her husband's job loss and departure were unexpected events that are unlikely to recur. I'm sure her husband's abrupt departure hit her hard. On her own, she lacked the means to satisfy her financial obligations. She was forced to move into an apartment and she made the necessary adjustments to her lifestyle to live on her income. Throughout that difficult period, she continued to work at a high level. Obviously, she could not have anticipated abandonment by her husband and the associated loss of income when she agreed to repay the mortgage loans in 2005. And it is unlikely that Applicant would have incurred any of the delinquent financial accounts in the SOR but for her husband's unexpected job loss and his abandonment of the marriage.

Since the foreclosure, Applicant has endeavored to live within her means. She is now working with a bankruptcy attorney to resolve the residual financial issues associated with her husband's abandonment. In other words, the pending Chapter 7 bankruptcy case is a clear indication that her unresolved indebtedness is being resolved and is under control. Once her bankruptcy case is finished, obtaining a divorce is the next step. Applicant did not present a perfect case in mitigation, but she did present sufficient evidence to explain and mitigate the financial considerations security concern.

Applicant's history of financial problems or difficulties does not create doubt about her current 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 versa*. I also gave due consideration to the whole-person concept.³⁸ Accordingly, I conclude that she 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.

³⁸ AG ¶ 2(a)(1)–(9).

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a–1.f: For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard
Administrative Judge