



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



In the matter of:)
)
-----) ISCR Case No. 13-01018
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank Jr., Esq., Department Counsel
For Applicant: *Pro se*

03/27/2014

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke her security clearance to work in the defense industry. The evidence shows she has a history of financial problems or difficulties largely due to her husband's bad behavior (drug addiction and drug-related criminal conduct) as well as uninsured medical expenses stemming from childbirth in 2010. The security concern is mitigated because: (1) the financial problems happened under circumstances that are unlikely to recur; (2) the conditions that resulted in the financial problems were largely beyond her control and she has acted responsibly under the circumstances; and (3) there are clear indications that the financial problems are being resolved or are under control. Accordingly, this case is decided for Applicant.

Statement of the Case

On November 6, 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 27, 2013.

The case was assigned to me on February 5, 2014, to conduct a hearing as requested by Applicant. The hearing was held as scheduled on March 6, 2014. At the hearing, Department Counsel presented Exhibits 1–3, which were admitted. Likewise, Applicant presented Exhibits A–C, which were admitted, she called one witness (her husband), and she testified on her own behalf. The transcript (Tr.) was received March 14, 2014.

The record was kept open until March 20, 2014, to allow Applicant to submit additional documentary evidence. She made a timely submission, and those two matters are admitted as Exhibits D and E without objections.

Findings of Fact

Applicant is a 32-year-old employee of a federal contractor. Her job title or position is order clerk II, a job she has held since mid-2009. Her duties involve working in supply and logistics managing equipment accounts at a military base. She is currently pursuing a bachelor's degree in health care administration, which she expects to complete this year.

Applicant is seeking to retain a security clearance that was previously granted to her in 2003, shortly after her enlistment in the U.S. Air Force. She was on active duty for four years during 2003–2007, and she was then honorably discharged at the pay grade of E-4. She has continued her military service with a maintenance squadron in the Air Force Reserve. She was recently promoted to technical sergeant, pay grade E-6.

Applicant married a fellow servicemember in 2006. They have one child, a daughter, born in June 2010. She and her husband were assigned to the same military base in 2007 when they were discharged from active duty. Her husband was discharged first, and she joined him a few months later in their current state of residence. She resumed full-time employment in late 2007, when she accepted a

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.

position doing security-screening work for the federal government. Her income from that job was lower than her military pay. She remained in the job until 2009, when she began her current job.

Applicant's husband's employment history since leaving military service in 2007 was irregular and unstable, but he has been steadily employed as warehouse worker since October 2011. Initially, he worked as a payment specialist for a large technology company from late 2007 to about the mid-2008. He began abusing crystal meth during this period. In 2008, he persuaded Applicant to allow him to trade his current car, which was leased, for an expensive SUV. Since he had poor credit, she was required to sign the financial paperwork, which included rolling the balance due on the lease into the new loan. The credit reports show the purchase was financed with a loan of \$42,686 opened in August 2008; payment terms were \$733 monthly for 75 months; and the loan was charged off in August 2009. (Exhibits 2 and 3) This matter is alleged in SOR ¶ 1.j.

In 2008, Applicant's husband quit his job as a payment specialist and decided to attend school, which he paid for with benefits from the Department of Veterans Affairs (VA). He reports that he became "full-blown addicted" to crystal meth when he was attending school, which led to the voluntary repossession of the SUV. (Tr. 34) Except for a two to three-month period in 2009, he did not work during 2008–2010. He spent his time living off his VA benefits and abusing drugs, which included marijuana, cocaine, and pills in addition to crystal meth. He disappeared from home for indefinite periods and would spend his time living in a hotel, partying, and abusing drugs. He paid for his drug addiction with his VA benefits and money he obtained from a joint checking account shared with Applicant. After Applicant closed the joint account, he found other ways to obtain money, such as taking Applicant's ATM card and obtaining the PIN under false pretenses, making purchases at a department store and then pawning the merchandise, and taking personal property from their home and pawning those items. (Tr. 43–46)

Applicant's husband completed a drug-treatment program in mid-2010 as part of his involvement with the state's criminal justice system. (Tr. 35–38, 56–58) He has a misdemeanor conviction for a drug offense and has completed the terms of the sentence. He also has a felony conviction for a drug offense and is currently serving the terms of the sentence, which include a suspended sentence to confinement for ten years, supervised probation for two years, 200 hours of community service, as well as fines and court costs. He was also subject to drug-testing and reports that he tested negative.

Applicant first became aware that something was amiss with their personal finances in about mid-2008. (Tr. 78–80). She closed their joint checking account and opened an individual account in 2009. (Tr. 79–80) Subsequently, she noticed her husband was still accessing the checking account, but her efforts to address it were unsuccessful. (Tr. 81) Her husband's drug abuse coupled with his unemployment caused a great deal of financial strain, to include an eviction from a residence in 2009.

(Tr. 98–99) It also included Applicant’s brief period of hospitalization when she became overwhelmed with stress from the difficulties with her husband. (Tr. 45)

The SOR alleges and the credit reports establish 14 delinquent debts for a total of about \$50,000. (Exhibits 2 and 3) Eight of the 14 debts are medical accounts for a total of about \$19,753. Those accounts are due to uninsured medical expenses for her pregnancy and childbirth in 2010. (SOR ¶¶ 1.c–1.f and 1.k–1.n; Tr. 69–70) The largest debt is a \$26,090 charged-off account due to the SUV purchase in 2008. (SOR ¶ 1.j) The other five accounts amount to about \$3,800. She attributes two of those accounts to her husband’s bad behavior. (SOR ¶¶ 1.b and 1.h) And at the time she could not afford to pay the remaining three accounts. (SOR ¶¶ 1.a, 1.g, and 1.i)

Applicant has not paid, settled, entered into repayment agreements, disputed, or otherwise resolved any of the 14 accounts. (Tr. 82) She and her husband decided to seek Chapter 7 bankruptcy protection and they retained a bankruptcy attorney in November 2013. (Exhibit A). They provided the necessary information to the attorney and they also completed the financial counseling required by bankruptcy law. A bankruptcy petition should be filed soon.

Except for the pending bankruptcy case, Applicant reports that their financial situation is “pretty good now. I’m getting back on track, and I’m paying my debt that I have, my current debt off.” (Tr. 94) She stated that they are current on rent, utilities, routine monthly expenses, and paying extra on an auto loan, and that she is budgeting to prevent overspending. (Tr. 94–95) She stated that as of the hearing date they had about \$1,500 in a joint checking account, \$3,000 in her savings account, \$800 to \$1,000 in his savings account, \$6,000 to \$7,000 in her Roth IRA account, and \$60,000 in her 401(k) account. (Tr. 96–97)

Applicant has a good record of employment as shown by four highly laudatory letters of recommendation submitted on her behalf. (Exhibits B, C, D, and E) In addition to Applicant’s work ethic, the authors of the letters commented favorably on her good character, honesty, and trustworthiness. One of the authors described Applicant as “an awesome friend” and faithful member of the same church. (Exhibit C).

Law and Policies

It is well-established law that no one has a right to a security clearance.² 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.”³ Under *Egan*, Executive Order 10865, and the Directive, any doubt

² *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).

³ 484 U.S. at 531.

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.⁴ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁰ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹¹

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.¹² Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

⁴ Directive, ¶ 3.2.

⁵ Directive, ¶ 3.2.

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

⁷ Directive, Enclosure 3, ¶ E3.1.14.

⁸ Directive, Enclosure 3, ¶ E3.1.15.

⁹ Directive, Enclosure 3, ¶ E3.1.15.

¹⁰ *Egan*, 484 U.S. at 531.

¹¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹² Executive Order 10865, § 7.

Discussion

Under Guideline F for financial considerations,¹³ 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.¹⁴ The overall concern under Guideline F 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.¹⁵

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

There is substantial evidence that Applicant has a history of financial problems or difficulties. Her unfavorable financial history indicates inability or unwillingness to satisfy debts¹⁶ and a history of not meeting financial obligations.¹⁷ The facts are more than sufficient to establish these two disqualifying conditions.

There are six mitigating conditions under Guideline F.¹⁸ Given the evidence here, I have considered the following:

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 cast doubt on the individual's current reliability, trustworthiness, or good judgment;

¹³ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁴ 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).

¹⁵ AG ¶ 18.

¹⁶ AG ¶ 19(a).

¹⁷ AG ¶ 19(c).

¹⁸ AG ¶¶ 20(a)–(f).

AG ¶ 20(b) the conditions that resulted in the financial problem 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 individual acted responsibly under the circumstances; and

AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.

Applicant's financial problems are related to her husband's bad behavior and uninsured medical expenses. Those circumstances are unlikely to recur because her husband has abstained from drug abuse since 2010 and has been steadily employed since 2011, and she now has health insurance. Her past financial problems do not cast doubt on her current security suitability because her financial situation has stabilized and the problem is being addressed. AG ¶ 20(a) applies.

The conditions that resulted in Applicant's financial problems were largely beyond her control and she has acted responsibly under the circumstances. As stated previously, her financial problems are due to the combination of her husband's bad behavior and uninsured medical expenses. Although she has not paid or settled any of the 14 delinquent debts in the SOR, she has nonetheless acted responsibly under difficult circumstances by: (1) maintaining full-time employment with a good employment record throughout this period; (2) advancing in the Air Force Reserve from E-4 to E-6; and (3) remaining in her marriage to a husband many women would have simply given up on and seeing him through his troubles with the state's criminal justice system, drug treatment, and a return to steady employment. Although she did not manage this situation perfectly (few people would), those are not the actions of an irresponsible person. AG ¶ 20(b) applies.

There are clear indications that Applicant's financial problems are being resolved or are under control. That conclusion is supported by the fact that Applicant, jointly with her husband, is in the process of resolving the past indebtedness by a Chapter 7 bankruptcy case. Although that pales in comparison with repayment of debt, it shows, along with Applicant's otherwise stable financial situation, that the problem is under control and will be resolved in the near future. AG ¶ 20(c) partially applies.

After weighing the relevant disqualifying and mitigating conditions and evaluating the evidence in light of the whole-person concept, I conclude Applicant presented sufficient evidence to explain, extenuate, and mitigate the security concern under Guideline F. The evidence established that Applicant was taken advantage of by her husband. Through his drug addiction, he wreaked havoc in their marriage, to include doing serious damage to their financial situation. Applicant, to her credit, endeavored to persevere through difficult circumstances. The situation has stabilized, and she is a busy mother, spouse, full-time employee, and college student. A remarkable achievement under the circumstances, and a telling statement about the strength of her

character, which bodes well for her security suitability. Accordingly, I conclude she has 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:	For Applicant
Subparagraphs 1.a–1.n:	For Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge