



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



In the matter of:)
)
-----) ISCR Case No. 14-02987
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: Daniel H. Funk, Esq.

10/07/2015

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 past-due first and second mortgage loans for a residential property. Applicant provided extensive documentation that is sufficient to explain and mitigate her unfavorable financial history. 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 November 27, 2013.¹ After reviewing the application and information gathered during a background investigation, the Department of Defense

¹ Government Exhibit 3 (this document is commonly known as a security clearance application).

(DOD),² on August 19, 2014, 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. Applicant answered the SOR in a September 13, 2014 response wherein she admitted the SOR allegations and provided a two-page memorandum explaining her situation. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.⁴

On March 18, 2015, Department Counsel submitted all relevant and material information that could be adduced at a hearing.⁵ This so-called file of relevant material (FORM) was mailed to Applicant, who received it on May 22, 2015. With the assistance of counsel, on June 18, 2015, Applicant submitted an extensive reply (more than 100 pages) consisting of a brief and seven attached exhibits, to which Department Counsel had no objections. The case was assigned to me on August 4, 2015. Thereafter, I tasked Applicant's counsel with providing an index or table of contents to assist me in identifying Applicant's exhibits, and that index was received.

Findings of Fact

Applicant is a 38-year-old employee who is seeking to retain a security clearance. She is employed as a program analyst for a federal contractor. She has worked for this company since 2012. According to her functional manager, Applicant has a good record of employment with demonstrated attention to detail and organizational skills, she follows rules and regulations, she has good judgment, and he believes she is reliable and trustworthy.⁶ Applicant married in April 2006, and she and her husband had a child in October 2013.

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). The AG replace the guidelines in Enclosure 2 to the Directive.

⁴ Directive, Enclosure 3, ¶ E3.1.7.

⁵ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which are identified as evidentiary exhibits in this decision.

⁶ Applicant's Exhibit 7.

Applicant has a history of financial problems consisting of two delinquent mortgage loans. Those two loans form the basis for the SOR allegations. The SOR does not allege other delinquent debts, and credit reports from 2015 and 2013 do not reflect additional delinquent accounts.⁷ As alleged in the SOR, the 2013 credit report shows that the first mortgage loan was past due in the amount of \$10,568, had an outstanding balance of \$144,010, and was in foreclosure. It also shows that the second mortgage loan was past due in the amount of \$1,719 with an outstanding balance of \$37,287. Applicant provided details about the mortgage loans during the course of her background investigation in January 2014.⁸

In 2006, during the then real estate boom, Applicant and her husband bought a residential property subject to first and second mortgage loans for \$158,040 and \$39,510, respectively. The purchase was made based on documentation showing the house was built in 1986.⁹ The property also passed an inspection before the purchase.

After living in the house for about six months, Applicant and her husband experienced problems requiring substantial repairs (e.g., a leaky roof that was previously inadequately repaired resulting in mold, copper pipes rotting under the house, and poor duct work in the crawl space).¹⁰ Applicant and her husband consulted service professionals who opined that the house was not built in the 1980s and that the house should not have passed an inspection. An energy audit was also conducted due to abnormally high utility bills. Further research led to the discovery that the home was actually built 50 years earlier in 1938.¹¹

Applicant and her husband consulted a real estate attorney who advised them that they were without recourse.¹² They continued to make the payments on the mortgage loans and made small repairs on the house as they could afford to until Applicant learned she was pregnant in early 2013. After consulting legal counsel, they decided to pursue a short sale of the property because they believed the house was unsafe for an infant. Unable to refinance the mortgage loans and lacking the financial means to make the major repairs, they stopped making the loan payments and moved into Applicant's mother-in-law's house, which they had assumed the mortgage loan after her passing.

⁷ Government Exhibits 5 and 6.

⁸ Government Exhibit 7 and Applicant's Exhibit 1.

⁹ Applicant's Exhibit 2.

¹⁰ Applicant's Exhibit 3.

¹¹ Applicant's Exhibit 6.

¹² One would think that a lawsuit based on fraud in the inducement could be brought, but that question is beyond the scope of this decision.

Applicant reported the pending short sale and possible foreclosure to her company's facility security officer (FSO) in November 2013.¹³ The short sale was unsuccessful, and the home was foreclosed upon via a trustee sale in March 2014. Applicant reported the trustee sale to the FSO in April 2014.¹⁴ The available evidence does not include any information about a deficiency balance from either loan.

Applicant's current financial situation is much improved.¹⁵ A monthly cash-flow statement shows a positive net remainder of \$1,417. The positive cash flow will allow Applicant to address any deficiency owed.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁶ 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."¹⁷ 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.¹⁸ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁰ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²¹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

¹³ Applicant's Exhibit 6.

¹⁴ Applicant's Exhibit 6.

¹⁵ Applicant's Exhibits 4 and 5.

¹⁶ *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).

¹⁷ 484 U.S. at 531.

¹⁸ Directive, ¶ 3.2.

¹⁹ Directive, ¶ 3.2.

²⁰ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²¹ Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.²² In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²³ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁴ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁵

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.²⁶ 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,²⁷ 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.²⁸ 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

²² Directive, Enclosure 3, ¶ E3.1.15.

²³ Directive, Enclosure 3, ¶ E3.1.15.

²⁴ *Egan*, 484 U.S. at 531.

²⁵ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁶ Executive Order 10865, § 7.

²⁷ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²⁸ 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).

questions about an individual's reliability, trustworthiness, and ability to protect classified information.²⁹

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 debts³⁰ and a history of not meeting financial obligations³¹ within the meaning of Guideline F.

In mitigation, I have considered six mitigating conditions under Guideline F,³² and I have especially 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;

AG ¶ 20(c) . . . there are clear indications that the problem is being resolved or is under control.

The circumstances surrounding the purchase of the house include the fact that Applicant and her husband were misled about the age and condition of the property. This unpleasant surprise occurred despite that the house passed an inspection at the time of sale. They acted responsibly under the circumstances by making the mortgage payments for several years until deciding moving was necessary due to the condition of the house and the pending birth of their first child. They sought and followed professional advice when they stopped making the loan payments and attempted a short sale, albeit without success, resulting in the foreclosure. The available evidence does not include information on a deficiency balance, but they have sufficient cash flow to address a deficiency balance via a monthly repayment agreement should a deficiency exist. Other than the two delinquent mortgage loans, the available evidence shows that Applicant has successfully managed her financial responsibilities. The totality of facts and circumstances strongly suggests that the delinquent mortgage loans were a one-time occurrence that is quite unlikely to recur.

²⁹ AG ¶ 18.

³⁰ AG ¶ 19(a).

³¹ AG ¶ 19(c).

³² AG ¶ 20(a)–(f).

In sum, I am persuaded that Applicant presented sufficient evidence to explain and mitigate the concern stemming from her unfavorable financial history. The evidence leaves me without doubt or concern 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 versa*. I also gave due consideration to the whole-person concept.³³ 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.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.b:	For Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge

³³ AG ¶ 2(a)(1)–(9).