



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



In the matter of:)
)
 -----) ISCR Case No. 14-00447
)
 Applicant for Security Clearance)

Appearances

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

06/10/2015

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 that are unresolved and ongoing. She did not submit sufficient evidence to rebut, extenuate, mitigate, or explain the concern. 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 September 9, 2013.¹ After reviewing the application and information gathered during a background investigation, the Department of Defense

¹ Exhibit 4 (this document is commonly known as a security clearance application).

(DOD),² on April 18, 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 two submissions, dated May 16, 2014, and June 3, 2014, respectively. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.⁴

On November 12, 2014, 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 November 18, 2014. Applicant did not reply within 30 days from receipt of the FORM. The case was assigned to me on May 12, 2015. There is no explanation in the case papers to account for the five-month delay from December 18, 2014, to May 12, 2015.

Ruling on Evidence

Exhibit 8 is a report of investigation (ROI) from the background investigation of Applicant. The document is a summary of an interview of Applicant conducted on October 14, 2013. An ROI may be received and considered as evidence when it is authenticated by a witness.⁶ Here, Exhibit 8 is not authenticated in any way. Although Applicant, who is representing herself, has not raised the issue via an objection, I am raising it *sua sponte*. With that said, it is evident that Department Counsel is acting in good faith, having highlighted the issue in their brief.⁷ Nevertheless, Applicant's lack of

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 Directive, Enclosure 3, ¶ E3.1.20; see ISCR Case No. 11-13999 (App. Bd. Feb. 3, 2014) (the Appeal Board restated existing caselaw that a properly authenticated report of investigation is admissible).

⁷ Department Counsel Brief at 2, n. 1.

response to the FORM does not amount to a knowing waiver of the right to object to the ROI.⁸ Accordingly, Exhibit 8 is not admissible and I have not considered it.

Findings of Fact

Applicant is a 45-year-old employee who is seeking to obtain a security clearance. She is employed by a federal contractor as a help-desk engineer. She has been so employed in a full-time capacity since July 2006. Her educational background includes attending both a community college and an online university program, neither of which resulted in receiving a degree. Her employment history also includes honorable military service in a state air national guard during 1988–2009.

Applicant has a history of financial problems, which she does not dispute. She disclosed a failure to file a state income tax return for tax year 2009 and a number of delinquent accounts in her September 2013 security clearance application.⁹ The SOR alleged the failure to file the 2009 return as well as eight collection and two past-due accounts in amounts ranging from \$52 to \$4,000 for a total of \$8,203 in collection accounts and \$808 in two past-due student loan accounts. In her response to the SOR, she admitted the allegations except for two collection accounts in SOR ¶¶ 1.d and 1.j. In addition to her admissions, the delinquent accounts are established by credit reports.¹⁰

Applicant did not provide documentation showing that the collection accounts are paid, settled, in repayment, forgiven, cancelled, in dispute, or otherwise resolved. Likewise, she did not provide documentation showing that the state income tax matter is resolved or is in the process of resolution.

Concerning the student loan accounts, Applicant provided documentation showing that, in April 2014, she entered into a loan-rehabilitation program for the two loans, which then had a combined balance of \$5,067.¹¹ She agreed to make monthly payments of \$75 beginning in April 2014. The loans could be purchased by an eligible lender after nine timely payments at which time the loans would be considered no longer in default but rehabilitated. She did not submit documentation showing proof of payment under the terms of the loan-rehabilitation program or any other documentation related to the two student loan accounts.

In her response to the SOR, Applicant stated that she would like to pay off her delinquent accounts, but she has experienced financial hardships that prevented her

⁸ Wavier means “[t]he voluntary relinquishment or abandonment – express or implied – of a legal right or advantage; the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it.” *Black’s Law Dictionary*, 1717 (Bryan A. Garner ed., 9th ed., West 2009).

⁹ Exhibit 4 (see responses to Question 27).

¹⁰ Exhibits 5, 6, and 7.

¹¹ Attachment to Answer to SOR.

from doing so. She explained that she has two adult children who have incurred various indebtedness that she has paid. She also a one minor child, and all three children live with her.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹² 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.”¹³ 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.¹⁴ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁰ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²¹

¹² *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).

¹³ 484 U.S. at 531.

¹⁴ Directive, ¶ 3.2.

¹⁵ Directive, ¶ 3.2.

¹⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁷ Directive, Enclosure 3, ¶ E3.1.14.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ *Egan*, 484 U.S. at 531.

²¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.²² 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,²³ 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.²⁴ 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.²⁵

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

²² Executive Order 10865, § 7.

²³ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²⁴ 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).

²⁵ AG ¶ 18.

to satisfy debts²⁶ and a history of not meeting financial obligations²⁷ within the meaning of Guideline F. In addition, her failure to file the 2009 state income tax return is disqualifying.²⁸

In mitigation, I have considered six mitigating conditions under Guideline F,²⁹ and I have especially considered the following:

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; and

AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has a history of financial problems or difficulties, some of which may be related to the trouble caused by her two adult children. But that is not sufficient to resolve the concern given that all the financial matters in the SOR are unresolved and ongoing. Moreover, she has not submitted documentation showing a good-faith effort to resolve those matters.

Of course, the purpose of this case is not aimed at collecting debts or enforcing tax laws.³⁰ Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the 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 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

²⁶ AG ¶ 19(a).

²⁷ AG ¶ 19(c).

²⁸ AG ¶ 19(g).

²⁹ AG ¶ 20(a)–(f).

³⁰ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

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.³¹

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. Actions speak louder than words, and Applicant has not taken documented actions to resolve any of the matters in the SOR.

Because Applicant chose to have her case decided without a hearing, I am unable to evaluate her demeanor. Limited to the written record, I am unable to assess her sincerity, candor, or truthfulness. She also chose not to respond to the FORM with relevant and material facts about her circumstances, which may have helped to explain, extenuate, or mitigate the concern.

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 versa*. I also gave due consideration to the whole-person concept.³² 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
Subparagraphs 1.a–1.k:	Against Applicant

³¹ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

³² AG ¶ 2(a)(1)–(9).

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