DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---------------------------------	)	ISCR Case No. 14-06915
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

01/28/2016

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, which is due to a job layoff in 2009 and a subsequent two-year period of unemployment that ended in October 2011. Although she did not present a perfect case in mitigation, she presented sufficient evidence to explain and mitigate the security concern stemming from her problematic 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 July 15, 2014.[1] After reviewing the application and information gathered during a background investigation, the Department of Defense

[1] Exhibit 5 (this document is commonly known as a security clearance application).

(DOD),[2] on June 1, 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.[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 July 13, 2015 response consisting of a one-page memorandum.

Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.[4] On September 8, 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 September 21, 2015. Applicant replied in a timely manner and submitted a one-page memorandum along with three letters of confirmation of payment for the delinquent debt in SOR ¶ 1.c, which are collectively admitted without objections as Exhibit A. The case was assigned to me on December 1, 2015.

Findings of Fact

Applicant is a 65-year-old employee who is seeking to obtain a security clearance. She has been employed as a receptionist for a federal contractor since October 2011. Before that, she was unemployed for two years. Before that, she was employed as a receptionist for a federal contractor from 1994 until a layoff in October 2009. She held a security clearance during that period of employment. During her 2009–2011 unemployment, she supported herself with unemployment compensation and her savings, but nonetheless fell behind on her financial obligations.

Applicant has a history of financial problems, which she does not dispute. In addition to her admissions to the SOR allegations, her problematic financial history is documented and established by credit reports from 2015 and 2014.[6]

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[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] Exhibits 6 and 7.

The SOR allegations consist of nine delinquent debts for a total of $11,776 consisting of an unpaid judgment for $1,047 and eight collection or charged-off accounts. In her answer to the SOR, she admitted seven of the nine delinquent debts and asserted that two debts were duplicates. She also explained the following: (1) she has been a longtime single mother of two children without the benefit of child support, which resulted in her being solely responsible for her children's expenses, to include student loans; (2) her financial struggles were attributable to the 2009–2011 period of unemployment; (3) she moved in with her mother to reduce her living expenses but ended up taking on expenses while living there; and (4) she was unable to make payment arrangements until September 2015, and then intended to resolve the debts starting with the smallest debt first.

Her claim that the debts in SOR ¶¶ 1.d and 1.e are the same debt is supported by the evidence. The 2015 credit report shows this was a single debt reported twice, first as a $1,797 charged-off account by the original creditor, and then as a $2,561 collection account with the successor-in-interest creditor.[7]

Her claim that the debts in SOR ¶¶ 1.b and 1.i are the same debt is not supported by the evidence. The credit reports show they are separate accounts with separate account numbers with unrelated creditors.[8]

In her reply to the FORM, Applicant provided a series of letters from August–September 2015 showing that she has made monthly payments on the $786 collection account in SOR ¶ 1.c, reducing the balance to about $244 as of September 29, 2015.[9] The collection account stems from a student loan cosigned by Applicant for her son, which had a balance as high as about $3,000 at one point. She also explained that her finances did not allow her to make other repayment arrangements until the student loan debt was resolved. She did not submit documentation for the remaining seven delinquent debts, which are found to be unresolved.

Law and Policies

It is well-established law that no one has a right to a security clearance.[10] 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

[7] Exhibit 6 at 2–3.

[8] Exhibit 6 at 2; Exhibit 7 at 7.

[9] Exhibit A.

[10] *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).

side of denials."[11] 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.[12] An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.[13]

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.[14] The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.[15] An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.[16] In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.[17] In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.[18] The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.[19]

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.[20] Instead, it

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[11] 484 U.S. at 531.

[12] Directive, ¶ 3.2.

[13] Directive, ¶ 3.2.

[14] ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

[15] Directive, Enclosure 3, ¶ E3.1.14.

[16] Directive, Enclosure 3, ¶ E3.1.15.

[17] Directive, Enclosure 3, ¶ E3.1.15.

[18] *Egan*, 484 U.S. at 531.

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

[20] Executive Order 10865, § 7.

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,[21] 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.[22] 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.[23]

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 of inability or unwillingness to satisfy debts[24] and a history of not meeting financial obligations[25] within the meaning of Guideline F. Excluding the $1,797 collection account in SOR ¶ 1.d due to duplication, and presuming the small balance of $244 for the collection account in SOR ¶ 1.c has now been paid, Applicant is facing about $9,200 in delinquent debt for the remaining seven SOR allegations.

In mitigation, I have considered six mitigating conditions under Guideline F,[26] and I have especially considered the following as most pertinent:

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

[22] 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).

[23] AG ¶ 18.

[24] AG ¶ 19(a).

[25] AG ¶ 19(c).

[26] AG ¶ 20(a)–(f).

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 problem is being resolved or is under control; and

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

Applicant's problematic financial history is due to her two-year period of unemployment during 2009–2011, a circumstance largely beyond her control because she lost her job due to a layoff from a longtime employer. She acted responsibly under the circumstances by eventually finding her current job at an age when many people would think about collecting Social Security benefits in lieu of full-time employment. She also moved in with her mother to reduce living expenses. Those are not the actions of an irresponsible person.

In addition, there are clear indications that Applicant's financial problem is being resolved based on her initiation of a good-faith effort to repay her delinquent debts. She largely resolved the $728 collection account in SOR ¶ 1.c, which stemmed from a student loan she cosigned for a son, a debt which I consider to be a high priority. And she has a plan to resolve the other seven delinquent debts by payment of one debt at a time starting with the smallest debt first, which is a reasonable approach that will take time to complete.

Of course, the purpose of this case is not aimed at collecting debts.[27] 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 that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the

[27] ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

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.[28]

Here, the evidence supports a conclusion that Applicant has established a plan and taken steps to implement that plan sufficient to mitigate the concern. The remaining seven delinquent debts total about $9,200, which is not a large, overwhelming amount of money beyond her ability to repay given her full-time employment. Looking forward, it is reasonable to conclude that she should be able to repay those debts, one debt at a time starting with the smallest debt first. Applicant is a mature woman with a long record of employment working in the defense industry, and she has earned an opportunity to show she can execute the balance of her repayment plan.

Applicant's history of financial problems or difficulties does not create 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.[29] 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.i:	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

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

[29] AG ¶ 2(a)(1)–(9).