

KEYWORD: Financial

DIGEST: Applicant, an 82-year-old widow, has experienced financial problems largely beyond her control. Clearance is granted.

CASENO: 03-06760.h1

DATE: 01/31/2006

DATE: January 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06760

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, an 82-year-old widow, has experienced financial problems largely beyond her control. Clearance is granted.

STATEMENT OF THE CASE

On July 7, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleged a security concern under Guideline F for financial considerations. Applicant replied to the SOR on August 11, 2004. Her answers were mixed, admitting in part and denying in part the SOR allegations, and she requested a hearing.

Department Counsel indicated she was ready to proceed on June 21, 2005, and the case was assigned to me June 27, 2005. Thereafter, a notice of hearing was issued scheduling the hearing for September 14, 2005. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the transcript September 27, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the record, I make the following findings of fact:

Applicant is an 82-year-old widow who is seeking to retain a security clearance she has held for decades. From November 1962 to November 1990, Applicant worked as a civil servant for the federal government. She held a security clearance for most of her federal employment.

She retired in 1990, but she resumed her employment in March 1991 as a contractor at her former place of employment. She went back to work to generate some additional income due to her husband's illness (diabetes). Her husband's condition grew progressively worse (he went blind in 1992) and progressively generated more out-of-the-pocket expenses not covered by health insurance. Applicant's husband passed away in 1995 or 1996.

Before her husband's illness, Applicant's financial situation was stable. In January 1994, in an effort to address her financial troubles, Applicant filed a Chapter 13 bankruptcy petition (SOR ¶1.h), which is sometimes called a wage earner repayment plan (Exhibit 11). Applicant paid about \$5,083 under the plan, but was unable to make all payments called for by the plan. The court dismissed the case in May 1995.

Applicant took a new loan on her home in October 1997. In 1999 she got behind on her monthly mortgage payments. This delinquency led her to file a Chapter 13 bankruptcy petition (SOR ¶1.g) in November 1999 (Exhibit 12). Her total liabilities were \$153,735.28, of which the home loan was \$135,697.72. Subsequently, in October 2001, the court denied Applicant's proposed Chapter 13 plan, and in November 2001, the court dismissed the case.

Foreclosure action (SOR ¶1.e) followed the dismissal of the bankruptcy case. According to the loan history (Exhibit 14), the foreclosure concluded in August 2002 and there is no balance due.

Applicant was sold a high-end vacuum cleaner in approximately 1996 or 1997. The purchase was made through a financing company. In December 1998, the company filed a lawsuit against Applicant seeking payment on the installment contract (Exhibit 13). In March 1999, Applicant agreed to a consent judgment for \$1,451.36 (the amount alleged in ¶1.a), plus attorney fees of \$217.70 and costs of \$70.00, for a total of \$1,739.06 (the amount alleged in ¶1.b). It appears this judgment has not yet been satisfied.

Applicant is indebted to a state tax authority money for unpaid taxes in the amount of about \$2,400 (SOR ¶1.f). Applicant entered into an installment payment plan with the state agreeing to pay \$100 monthly. She is making payments as agreed.

Applicant is indebted for a charged off bad debt for \$1,545 stemming from a credit card account. It was charged off in

about September 1998, the same time she was experiencing her financial problems.

Applicant is indebted for a charged off bad debt for \$7,168 stemming from a car loan. The car was a lemon. It was charged off in about September 1999, the same time she was experiencing her financial problems.

As a retired federal employee, Applicant receives a retirement annuity with a net monthly payment of \$1,989.59. She's also entitled to receive money from her husband's retirement annuity with a net monthly payment of \$1,134.00. She works no more than 32-hours per week for a hourly wage.

Also contributing to Applicant's financial problems are her two adult, ne'er-do-well sons who have taken advantage of their mother, including living with her without making any financial contribution. One son, who is HIV positive and a problem drinker, has physically abused Applicant. In addition, Applicant experienced a period of unemployment from October 2000 to March 2001.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

A person granted access to classified information enters into a special relationship with the government. 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.⁽²⁾ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁶⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁹⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the 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.

CONCLUSIONS

Under Guideline F, a security concern typically exists for two different types of situations--significant unpaid debts or unexplained affluence. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

Here, based on the record evidence as a whole, the government established its case under Guideline F. The record evidence, taken as a whole, demonstrates a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts.⁽¹²⁾ These matters raise a security concern under the guideline.

I reviewed the mitigating conditions under the guideline and conclude Applicant successfully explained and mitigated the security concern. Applicant's financial problems were largely beyond her control,⁽¹³⁾ as evidenced by her husband's prolonged illness starting in about 1990 and ending with his demise in 1995 or 1996. Applicant's financial situation was stable until her husband's prolonged illness. Also, I was impressed with her demeanor and serious attitude she displayed during the hearing, and I conclude her financial problems did not result from high living or financially irresponsible behavior. In reaching this conclusion, I considered that Applicant is 82 years old and living on a fixed income, other than what she earns when working part-time. This circumstance limits her ability to repay old, charged off debt after she has paid for her normal living expenses. In addition, Applicant's total delinquent debt is less than \$15,000, of which only

the state tax debt is being actively pursued for collection, and she is making monthly payments to the state. Finally, Applicant receives substantial credit for her many years of employment with the federal government holding a security clearance without a negative incident or problem. Viewing the record evidence as a whole, I conclude Applicant is not at risk of engaging illegal or unethical acts to meet her financial obligations.

To conclude, Applicant has met her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I considered the evidence as a whole, both favorable and unfavorable, the whole-person concept, the clearly-consistent standard, and other appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

SOR ¶ 1-Guideline F: For Applicant

Subparagraphs a - h: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Executive Order 10865, § 7.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
11. *Egan*, 484 U.S. at 528, 531.
12. E2.A6.1.2.1. A history of not meeting financial obligations;" and E2.A6.1.2. 3. Inability or unwillingness to satisfy debts.
13. E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation).