



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-07903
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro Se*

March 28, 2008

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on October 30, 2007. The SOR is equivalent to an administrative complaint and it details the factual basis for the action. The issues in this case fall under Guideline F for financial considerations based on a history of financial problems as evidenced by delinquent debts.

In addition to the Executive Order and Directive, this case is brought under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines) approved by the President on December 29, 2005. The Revised Guidelines were then modified by the Defense Department, effective September 1, 2006. They supersede or replace the guidelines published in Enclosure 2

¹ Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended, and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive).

to the Directive. They apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter.² The Directive is pending revision or amendment. The Revised Guidelines apply here because the SOR is dated after the effective date.

Applicant replied to the SOR on November 20, 2007, and requested a hearing. The case was assigned to me on January 17, 2008. The hearing took place as scheduled on January 31, 2008, and the transcript (Tr.) was received on February 7, 2008.

The record was left open until February 15, 2008, to allow Applicant an opportunity to submit additional documentary evidence. Those matters were timely submitted and forwarded by department counsel who made no objections. The post-hearing matters are admitted as follows: (1) Exhibit I—cover letter; (2) Exhibit J—bank letter, dated January 17, 2008; (3) Exhibit K—bank letter, dated January 17, 2008; (4) Exhibit L—bankruptcy court order; (5) Exhibit M—bankruptcy court confirmation order; (6) Exhibit N—Chapter 13 plan; (7) Exhibit O—Chapter 13 Schedules D and F; (8) Exhibit P—recent earnings statement; and (9) Exhibit Q—Applicant’s final decree of divorce, dated February 4, 2008. For the reasons discussed below, this case is decided for Applicant.

Procedural Rulings

The SOR was amended, without objections, to conform with the evidence by adding subparagraph 1.h in the following words and figures: “You filed a Chapter 13 bankruptcy case in October 2007” (Tr. 121–123).

Findings of Fact

Under Guideline F, the SOR alleges seven delinquent debts ranging from \$2,619 to \$18,000 for about \$64,000 in total. In her response to the SOR, Applicant admitted the factual allegations, provided a general explanation for her situation, and indicated that each of the seven debts had been included in a recent Chapter 13 bankruptcy case. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 50-year-old employee of a defense contractor. She has worked for her current employer since 1989 as the office administrator/manger and as the facility security manager (FSO) (Exhibit D). She has held a top-secret security clearance for many years and received training to perform the FSO duties. Since about November 2006, she has worked as the contracts assistant supporting a team of contracting

² See Memorandum from the Under Secretary of Defense for Intelligence, dated August 30, 2006, Subject: Implementation of Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 29, 2005).

officers and specialists. As such, she no longer performs FSO duties. Her current annual gross salary is about \$58,000 (Exhibit P).

Applicant's financial problems, which she does not dispute, stem from a difficult period of her nearly 20-year marriage, which ended in divorce in February 2008 (Exhibit Q). Before the difficulties, Applicant's financial situation was strong enough that in approximately 2004 she and her husband gave \$40,000 to their daughter for a down payment on a house (Tr. 69–70).

Things changed in about December 2005, when her husband suffered a work-related injury from a fall. Essentially self-employed and without disability insurance, he was unable to return to work on a full-time basis, although he worked sporadically. He had health insurance through Applicant's employment and he was a heavy user of medical services (Exhibit F—reflecting 164 claims against Applicant's health insurance from February 2006 to October 2007). His unemployment resulted in the family going from two incomes to one. Applicant attempted to manage the financial situation on her income and by using credit cards.

Not working, Applicant's husband increased his consumption of alcohol and became a heavy drinker. His drinking grew worse to the point that Applicant sought treatment for him in May 2007, but he was not amenable to treatment. Applicant separated from her husband a few months later in July 2007.

Facing a financial crisis, Applicant sought legal counsel who advised her to seek relief via a Chapter 13 bankruptcy case, which provides individual debtors, with a regular income, an opportunity for rehabilitation with a court-approved plan for payment to creditors. This is sometimes called a wage-earner's plan. Applicant initiated the Chapter 13 case in October 2007. In doing so, she completed credit counseling as required by bankruptcy law (Exhibit E). The bankruptcy court approved her plan in December 2007 (Exhibits A and M). The court-approved plan requires Applicant to pay \$450 monthly for 60 months to the bankruptcy trustee who will then pay creditors.

Six of the seven debts in the SOR are in Schedule F (unsecured debt) of Applicant's bankruptcy case (Exhibits B and O). The seventh debt alleged in SOR ¶ 1.f is in Schedule D because the creditor held a secured claim against a car. This matter was resolved when the creditor withdrew its objection to confirmation of the plan, Applicant surrendered the car to the creditor, and the creditor was allowed to file an amended proof of claim for the deficiency balance (Exhibits J, K, and L). Applicant is making the required monthly payment to the bankruptcy trustee by using payroll deduction with \$225 payments twice a month (Exhibit P).

Applicant's two adult children, a 28-year-old daughter and a 26-year-old son, testified at the hearing. Both children confirmed their stepfather's decline after his fall, his apparent alcoholism, and his unwillingness to obtain treatment. Likewise, both confirmed how difficult and trying the last few years were for their mother. Indeed, in July 2007, when his mother separated from his stepfather, the son felt compelled to

return home from across the country to help his mother. He is now living with her and working in the local area.

Applicant's former supervisor appeared at the hearing and his testimony is noteworthy (Tr. 36–53). The supervisor served in the Marine Corps during 1965–1995 and retired as a colonel. He served in the infantry for about 12 years before working in logistics, with specialities in ordnance, munitions, and classified programs. Also, he commanded units at the company and battalion levels. During Operations Desert Shield and Storm in 1990–1991, he served as the ordnance officer for the Marine Corps. He believes he has held a top-secret security clearance since about 1973. He has worked for defense contractors since 1995. He supervised Applicant as officer manager and FSO from about January 2002 to January 2006. In his opinion, Applicant was the best security manager he has worked with; she did a superb job in her FSO duties, as evidenced by security inspections that always went well. He strongly believes Applicant is a dedicated and conscientious employee and a person of integrity. He has no doubts or concerns about Applicant's suitability for a security clearance.

Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, no one has a right to a security clearance.³ As noted by the Supreme Court in 1988 in the case of *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁴ A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁵ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁶ 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.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁷ The government has the burden of presenting

³ *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) (“It is likewise plain that there is no ‘right’ to a security clearance, so that full-scale due process standards do not apply to cases such as Duane’s.”).

⁴ *Egan*, 484 U.S. at 531.

⁵ Directive, ¶ 3.2.

⁶ Directive, ¶ 3.2.

⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

evidence to establish facts alleged in the SOR that have been controverted.⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁰ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹¹ The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹²

The Revised Guidelines set forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept. 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.¹³ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting eligibility for a security clearance.

Analysis

Under Guideline F for financial considerations,¹⁴ a security concern typically exists due to significant unpaid debts. "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, negligent, or careless in properly handling and safeguarding classified information.

⁸ Directive, Enclosure 3, ¶ E3.1.14.

⁹ Directive, Enclosure 3, ¶ E3.1.15.

¹⁰ Directive, Enclosure 3, ¶ E3.1.15.

¹¹ *Egan*, 484 U.S. at 531.

¹² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹³ Executive Order 10865, § 7.

¹⁴ Revised Guidelines at pp. 13–14 (setting forth the security concern and the disqualifying and mitigating conditions of Guideline F).

¹⁵ Revised Guidelines at p. 13.

The record evidence supports a conclusion that Applicant has a history of financial problems. Her history of financial problems is a security concern because it indicates inability to satisfy debts¹⁶ and a history of not meeting financial obligations¹⁷ within the meaning of Guideline F. The record evidence is more than sufficient to establish these two disqualifying conditions, which raise a security concern.

Guideline F contains six conditions that could mitigate the security concerns.¹⁸ The record evidence is sufficient to conclude that four of the six mitigating conditions apply in Applicant's favor as follows:

- 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;
- 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;
- 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; and
- The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Each MC is discussed below.

The first MC applies because Applicant's financial problems began shortly after her husband's fall in late 2005 and the corresponding loss of his income. Her situation became more difficult and complicated due to her husband's heavy drinking and unwillingness to obtain treatment. These circumstances are unlikely to recur because Applicant separated from her husband in July 2007 and obtained a divorce in February 2008. She is now financially responsible for her own circumstances and she earns sufficient income to do so. Because she resolved the source of her financial problems, and she has a plan to resolve her indebtedness via the Chapter 13 plan, her financial problems do not cast doubt on her current reliability, trustworthiness, or good judgment.

The second MC applies because Applicant incurred the indebtedness under circumstances largely beyond her control. Her financial house was in good order until 2006–2007 when her husband lost his income and went into a downward spiral due to

¹⁶ DC 1 is "inability or unwillingness to satisfy debts."

¹⁷ DC 3 is "a history of not meeting financial obligations."

¹⁸ Revised Guidelines at p. 14.

his health problems accompanied by heavy drinking. She tried to keep things afloat by using available credit until it was clear to her that she needed to dissolve the marriage. She separated from her husband, obtained the Chapter 13 plan, and her divorce recently became final. Given the trying and difficult circumstances of this particular case, she has acted responsibly within the meaning of the guideline.

The third MC applies because there are clear indications that Applicant's financial problems are being resolved or are under control, and Applicant had credit counseling as part of the bankruptcy case. The seven delinquent debts in the SOR are being resolved via the Chapter 13 plan, she is not incurring new delinquent debt, and she is otherwise living within her means.

The fourth MC is pertinent here, as it requires a person to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts. She is addressing her indebtedness through the court-approved plan and she has made the required \$450 monthly payments to date. With a 60-month plan, Applicant will pay \$27,000 toward resolving her indebtedness. She is earning a good salary and has sufficient income to pay her normal living expenses and her bankruptcy payments. Given the totality of facts and circumstances, her efforts are sufficient to constitute a good-faith effort within the meaning of the guideline.

This case has also been considered under the whole-person concept. Applicant is 50 years old and sufficiently mature to make prudent decisions about her finances. She has demonstrated maturity and good judgment by taking concrete actions to address the financial problems caused by circumstances largely beyond her control. Indeed, this is a case of bad things happening to an otherwise responsible person who has held a security clearance, without an adverse incident, for many years. In addition, she benefits from the unwavering endorsement of her former supervisor, a highly-experienced professional who has worked about 42 years in Defense Department related affairs. He has no doubts or concerns about Applicant's security suitability, and his opinion has received due consideration.

To conclude, based on the record evidence as a whole, both favorable and unfavorable, Applicant has presented sufficient evidence to rebut, explain, extenuate, or mitigate the financial considerations security concern. Applicant met her ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

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

Conclusion

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

Michael H. Leonard
Administrative Judge