



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



In the matter of:)
)
-----) ISCR Case No. 08-06150
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro Se*

September 2, 2009

Decision

LEONARD, Michael H., Administrative Judge:

This is a security clearance case in which Applicant contests the Defense Department's intent to deny her eligibility for an industrial security clearance. The action is based on Applicant's history of financial problems or difficulties (delinquent debts), which Applicant has yet to begin to address. The record contains insufficient evidence to explain, extenuate, or mitigate the security concerns stemming from her history of financial problems, which are ongoing and unresolved. Accordingly, as explained in more detail below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) to Applicant on March 11, 2009. The SOR is equivalent to a complaint and it details the factual basis for the action. The SOR alleged security concerns under Guideline F for financial considerations. The SOR also recommended submitting the case to an administrative judge for a determination to deny or revoke Applicant's security clearance.

Applicant answered the SOR on May 1, 2009, and she requested a hearing.² The case was assigned to me on June 9, 2009. The hearing took place as scheduled on July 15, 2009. The testimony of Applicant was taken, and Government Exhibits 1 through 6 were admitted. Applicant called no witnesses and offered no documentary evidence. The hearing transcript (Tr.) was received July 23, 2009.

Findings of Fact

The SOR alleged 41 delinquent debts for a total of about \$32,000. In reply to the SOR, Applicant admitted 16 of the 41 delinquent debts for a total of about \$19,000. Based on the record as a whole, the following facts are established by substantial evidence.

Applicant is a 37-year-old aircraft mechanic. She has been continuously employed by the same company since 1997. She is married and has two daughters, ages 12 and 6. Her husband works in the auto business (both sales and mechanics), and he has been unemployed for the last two months due to a business downturn. Applicant is seeking to retain a clearance previously granted to her.

Credit reports from 2008 establish (1) the debts alleged in the SOR, and (2) that Applicant has a history of financial problems.³ For example, the trade section of the March 2008 credit report has 102 accounts of which 62 are described as derogatory in some way (in collection, past due, etc.).⁴ The collection section of the same report has 15 collection accounts with a total balance of about \$16,768.

¹ This case is adjudicated under 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). In addition, because the SOR was issued after September 1, 2006, the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines) approved by the President on December 29, 2005, then made effective within the Defense Department on September 1, 2006, apply to this case. They supersede or replace the guidelines published in Enclosure 2 to the Directive.

² Tr. 7-9.

³ Exhibits 4 and 5.

⁴ Exhibit 5 (some of these accounts appear to be duplicates).

Concerning the debts alleged in the SOR, Applicant denied 25 of the 41 debts (of which 16 are medical accounts) because she did not recognize the creditor or the amount or both.⁵ She admitted that she had no documentation to show she was not responsible for the debts she denied.⁶ Likewise, she admitted that she took no steps to address the debts after receiving the SOR.⁷ Applicant has not made any payments on the debts she admitted.⁸ Her general plan, which is yet to be implemented, is that she intends to pay her creditors when she has extra money starting with the smallest debt.⁹

In addition to the debts in the SOR, Applicant is about two months behind on her \$521 monthly car loan.¹⁰ Her husband's car, a 1999 Jaguar, is paid off.¹¹ Also, Applicant is indebted to the IRS for back taxes for tax years 2005 and 2007, and she is making monthly payments per a repayment agreement with the IRS.¹² And Applicant is repaying a loan she took against her 401(k) account; this is the fourth such loan against the account.¹³

Applicant has little money in the bank.¹⁴ She described how she and her husband handle their money as "strangely."¹⁵ He is somewhat aware of her financial situation, but she is unaware of his financial situation.¹⁶

Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, the only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information.

⁵ Tr. 39.

⁶ Tr. 39.

⁷ Tr. 39.

⁸ Tr. 40–48.

⁹ Tr. 64.

¹⁰ Tr. 56.

¹¹ Tr. 56.

¹² Tr. 58–59.

¹³ Tr. 66.

¹⁴ Tr. 59–60.

¹⁵ Tr. 67.

¹⁶ Tr. 67–68.

It is well-established law that no one has a right to a security clearance.¹⁷ As noted by the Supreme Court 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.”¹⁸ 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.¹⁹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²¹ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁴ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁵ The agency appellate authority has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁶

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 commonsense decision based upon consideration of all the relevant

¹⁷ *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).

¹⁸ 484 U.S. at 531.

¹⁹ Directive, ¶ 3.2.

²⁰ Directive, ¶ 3.2.

²¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²² Directive, Enclosure 3, ¶ E3.1.14.

²³ Directive, Enclosure 3, ¶ E3.1.15.

²⁴ Directive, Enclosure 3, ¶ E3.1.15.

²⁵ *Egan*, 484 U.S. at 531.

²⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.²⁷ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Analysis

Under Guideline F for financial considerations,²⁸ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness, financial problems or difficulties, or financial irresponsibility. A security concern typically exists due to significant unpaid debts. The overall concern under Guideline F is that:

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.²⁹

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

Applicant's history of financial problems raises concerns because it indicates inability or unwillingness to satisfy debts³⁰ and a history of not meeting financial obligations³¹ within the meaning of Guideline F. Also, Applicant's multiple accounts and excessive indebtedness establish a pattern of consistent spending beyond one's means.³² The record establishes that Applicant has delinquent debts in excess of \$30,000, and she has no means to address the debts in a meaningful way. These facts

²⁷ Executive Order 10865, § 7.

²⁸ Revised Guidelines, ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁹ Revised Guidelines, ¶ 18.

³⁰ Revised Guidelines, ¶ 19(a).

³¹ Revised Guidelines, ¶ 19(c).

³² Revised Guidelines, ¶ 19(e).

and circumstances are more than sufficient to establish the three disqualifying conditions noted above, and it suggests financial irresponsibility as well.

The guideline also provides that certain conditions may mitigate security concerns as follows:³³

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;

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

The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; or

The affluence resulted from a legal source of income.

All of the mitigating conditions have been considered and none apply to mitigate and overcome the security concerns. Applicant's financial problems are not minor, and they are ongoing and unresolved. And she is yet to implement a realistic plan to address her indebtedness. Given these circumstances, it is too soon to tell if Applicant will resolve her outstanding delinquent debts in a reasonable time and then continue to be a financially responsible person. The likelihood of additional or continuing financial problems cannot be ruled out. Indeed, Applicant (1) is now two months past due on an auto loan, (2) owes the IRS back taxes for two tax years, and (3) is now repaying her fourth loan against her 401(k) account. These facts, when combined with the SOR indebtedness, show that her overall financial situation is unstable and headed toward collapse or bankruptcy or both. These circumstances are plainly contrary to the clearly-consistent standard I am required to apply. Accordingly, Guideline F is decided against

³³ Revised Guidelines, ¶ 20 (a) – (f) (setting forth six mitigating conditions).

Applicant. In reaching this conclusion, I gave due consideration to the nine-factor whole-person concept.³⁴

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the security concerns under Guideline F. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

Formal Findings

The formal findings on the SOR allegations, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.oo:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge

³⁴ Revised Guidelines, ¶ 2(a)(1) – (9).