



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



In the matter of:)
)
-----) ISCR Case No. 08-10577
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

For Applicant: Ellen Cook Sacco, Esq.

September 21, 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). The record contains sufficient evidence to establish that (1) her financial difficulties were, in part, due to circumstances largely beyond her control, (2) she made a good-faith effort to repay or otherwise resolve debts, (3) she has a reasonable basis to dispute some debts, and (4) she has taken positive steps to resolve the situation and it appears likely that she will favorably resolve the situation. Accordingly, as explained in more detail below, this case is decided for 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 27, 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 requested a hearing. The case was assigned to me on June 8, 2009. The hearing took place as scheduled on July 16, 2009. The record was left open until July 31, 2009, to allow Applicant to submit additional documentary evidence. Those matters were timely submitted and are marked and admitted without objections as follows: (1) Applicant Exhibit A-15—cover letter and dispute letter, dated July 20, 2009; and (2) Applicant Exhibit A-16—cover letter and dispute letter, dated February 23, 2009. The hearing transcript (Tr.) was received July 22, 2009.

Findings of Fact

Under Guideline F, the SOR alleged 10 delinquent debts ranging in amounts from \$65 to \$5,861 for a total of about \$15,000. Applicant's answers to the SOR were mixed. Based on the record as a whole, the following facts are established by substantial evidence.

Applicant is a 50-year-old senior software engineer. She has held her current job since September 2007, and her annual salary is about \$92,000. She and her husband separated in 1998, and they divorced in 2000. She has three children, sons, ages 26, 23, and 11. Her 11-year-old son was diagnosed with autism and is a special-education student.²

In addition to her salary, Applicant now receives about \$900 monthly in child support.³ This was not always the case, as Applicant had to take legal action to obtain

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 See Exhibit A-12.

³ Tr. 33-34.

payment and obtain a judgment for an arrearage in the amount of about \$30,000, but she subsequently waived the judgment in about 2004 or 2005.⁴

Applicant obtained a bachelor's degree in computer science in 1981. She started her first job with a defense contractor the same year. She has worked in the defense industry since 1981 except for the period 2000-2007, when she worked as a software test engineer for a large communications company. She was laid off from that job in February 2007, and was unemployed until starting her current position. She received four months of severance pay as well as a couple of months of unemployment compensation during this period. She was earning about \$82,000 annually when she was laid off.

In addition to the seven-month period of unemployment, Applicant incurred unexpected expenses after her job layoff in 2007 for her middle son's college education.⁵ In summary, due to a snafu at the financial aid office, Applicant spent about \$3,200 for her son's tuition and living expenses. The combination of her unemployment and the unexpected financial aid problem contributed to some of the financial difficulties alleged in the SOR, which are addressed below.

Applicant disputes an unpaid \$144 collection account alleged in SOR ¶ 1.a.⁶ She contends the account was resolved in 2008, and presented documentary information supporting her contention.

Applicant admits an unpaid \$1,565 charged-off account alleged in SOR ¶ 1.b.⁷ The debt stems from a credit card account, and it is marital debt that Applicant ended up addressing. She settled the account by making two payments of \$960 in June and July 2009.

Applicant disputes an unpaid \$76 collection account alleged in SOR ¶ 1.c.⁸ She disputed the account in writing in February 2009, and a credit bureau deleted it from the credit report in March 2009.

⁴ Tr. 112–113.

⁵ Tr. 27–32.

⁶ Tr. 42–47; Exhibit A-13.

⁷ Tr. 47–49; Exhibit A–2.

⁸ Tr. 49–51; Exhibit A–3.

Applicant disputes an unpaid \$303 collection account alleged in SOR ¶ 1.d.⁹ She disputed the account in writing in February 2009, and has not received a reply from the credit bureau. It does not appear on a July 2009 credit report.¹⁰

Applicant admits that her mortgage loan is past due and in foreclosure as alleged in SOR ¶ 1.e.¹¹ Applicant has not lived in this house since July 2008, when she and her youngest son moved into an apartment in a nearby community and a different school district, which provides superior special education services. She rented the house to a close friend of the family. The family friend and his roommates rather quickly failed to pay rent and vacated the house in about November 2008, and the house has remained vacant. The last mortgage payment was made in December 2008 or January 2009.¹² Applicant hired a third-party company to assist her with a loan-modification request in March 2009. That effort proved costly and useless as the third-party company charged her the equivalent of one monthly payment and did not provide the promised services. Applicant contacted the mortgage company the following month and submitted the necessary paperwork in support of her loan-modification request. The mortgage company denied the request on May 14, 2009. Applicant then decided to sell the house, possibly a short sale, and entered into a real estate listing agreement with a broker on July 5, 2009. The property is now listed for sale and for rent. Applicant understands the foreclosure action is delayed or halted for about 120 days to give her a chance to sell the property.¹³

Applicant admits a \$749 past-due account as alleged in SOR ¶ 1.f.¹⁴ This debt stems from an installment loan for an expensive car Applicant bought in 2006. She has missed the monthly payment from time-to-time, but the loan is now current as of July 2009.

Applicant disputes a \$2,054 past-due account as alleged in SOR ¶ 1.g.¹⁵ This debt stemmed from a mortgage loan that Applicant refinanced with her current mortgage in 2004. The account was paid in full in November 2004.

⁹ Tr. 51–52; Exhibit A–4.

¹⁰ Exhibit A–11.

¹¹ Tr. 61–73; Exhibits A–5, A–6, and A–7.

¹² Tr. 93.

¹³ Tr. 114.

¹⁴ Tr. 52–54; Exhibit A–8.

¹⁵ Tr. 54–55; Exhibit A–9.

Applicant admits an unpaid \$5,861 charged-off account in SOR ¶ 1.h.¹⁶ This debt resulted from a shortfall or gap in insurance coverage for an auto that was in an accident. Applicant settled the debt by making three payments of \$903 in April, May, and June 2009.

Applicant disputes an unpaid \$65 collection account alleged in SOR ¶ 1.i.¹⁷ She disputed the account in writing in February 2009, and has not received a reply from the credit bureau. The debt does not appear on a July 2009 credit report.¹⁸

Applicant disputes an unpaid \$193 collection account alleged in SOR ¶ 1.j.¹⁹ Applicant is disputing this debt with the assistance of counsel. A reply to the dispute letter is yet to be received.

In addition to the debts in the SOR, Applicant settled an unpaid \$1,741 collection about in about July 2009.²⁰ She settled the account by making a single payment of \$750.

With her salary and the child-support payment, Applicant estimates that she has a positive monthly cash flow and is able to meet her existing financial obligations.²¹

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.

It is well-established law that no one has a right to a security clearance.²² 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.”²³ Under *Egan*, Executive Order 10865, and the Directive,

¹⁶ Tr. 55–57; Exhibit A–10.

¹⁷ Tr. 59–60; Exhibit A–16.

¹⁸ Exhibit A–11.

¹⁹ Tr. 60–61; Exhibit A–15.

²⁰ Tr. 102–104; Exhibit A–14.

²¹ Tr. 73, 111–112.

²² *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).

²³ 484 U.S. at 531.

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.²⁴ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁶ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³⁰ The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.³¹

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 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

²⁴ Directive, ¶ 3.2.

²⁵ Directive, ¶ 3.2.

²⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁷ Directive, Enclosure 3, ¶ E3.1.14.

²⁸ Directive, Enclosure 3, ¶ E3.1.15.

²⁹ Directive, Enclosure 3, ¶ E3.1.15.

³⁰ *Egan*, 484 U.S. at 531.

³¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

of an applicant's loyalty.³² 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,³³ 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.³⁴

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

Both the disqualifying and mitigating conditions should be analyzed in light of the record. The record shows Applicant has a history of financial difficulties. It also shows that she has taken action on the ten debts in the SOR as follows: (1) she disputed, in writing, five accounts; (2) she settled two accounts; (3) she paid in full her prior mortgage loan via refinancing; (4) she brought her car loan current; and (5) she is in the process of resolving her mortgage loan. She also settled another account not alleged in the SOR. And the record shows that circumstances largely beyond her control contributed to her financial difficulties.

Turning first to the disqualifying conditions, Applicant's history of financial difficulties raises concerns because it indicates inability or unwillingness to satisfy debts³⁵ and a history of not meeting financial obligations³⁶ within the meaning of Guideline F. These facts and circumstances are more than sufficient to establish the two disqualifying conditions noted above, and it suggests financial irresponsibility as well.

³² Executive Order 10865, § 7.

³³ Revised Guidelines, ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

³⁴ Revised Guidelines, ¶ 18.

³⁵ Revised Guidelines, ¶ 19(a).

³⁶ Revised Guidelines, ¶ 19©.

Turning next to the mitigating conditions under the guideline, there are six that may mitigate security concerns, and they are as follows:³⁷

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.

The second, third, fourth, and fifth mitigating conditions are relevant to this case and are discussed below.

The second mitigating condition—circumstances beyond one's control—applies in Applicant's favor. Her unemployment in 2007, followed by the student financial aid snafu in 2007, followed by tenants who failed to pay in 2008, were all circumstances largely beyond Applicant's control. Individually and combined, these circumstances put Applicant in difficult positions—forcing her to look for a new job, coming up with money to pay for her son's college expenses, and leaving her with an empty house instead of paying tenants. She acted reasonably under these challenging circumstances by finding employment, taking care of her family, and doing what was possible to resolve the mortgage loan.

The third mitigating condition—indications that the problem is being resolved or is under control—applies in Applicant's favor. Applicant has taken positive steps to address her financial difficulties, and she is at a point now where it appears likely that she will resolve her financial problems, the mortgage loan being of most concern.

³⁷ Revised Guidelines, ¶ 20 (a) – (f) (setting forth six mitigating conditions).

The fourth mitigating condition—initiating a good-faith effort—applies in Applicant’s favor. Applicant paid in full one debt, settled two debts, and brought a past-due account current. She settled another account not alleged in the SOR. Also, she is taking reasonable and realistic steps to resolve her past-due mortgage. Her actions fall within the meaning of initiating a good-faith effort to repay or otherwise resolve debts.

The fifth mitigating condition—reasonable basis to dispute—applies in Applicant’s favor. Applicant disputes five of the ten debts in the SOR, and she has received favorable results in some cases and others are pending. And most important, Applicant provided documentary evidence to establish her disputes.

To summarize the evidence in mitigation, the record contains sufficient evidence to establish that (1) her financial difficulties were, in part, due to circumstances largely beyond her control, (2) she has made a good-faith effort to repay or otherwise resolve debts, (3) she has a reasonable basis to dispute some debts, and (4) she has taken positive steps to resolve the situation and it appears likely that she will favorably resolve the situation. Moreover, Applicant impressed me as an intelligent person who is working in a demanding field (software engineering), and she has equal challenges at home with a 11-year-old son who is receiving special education services for autism. She worked through a difficult period during 2007–2008, when she faced unemployment, unexpected college expenses, and unexpected tenant problems. Her persistence and tenacity in the face of these problems demonstrate both good character and suitability for access to classified information. Although Applicant did not present a perfect case in mitigation, she presented sufficient evidence to explain, extenuate, or mitigate the security concerns. Accordingly, Guideline F is decided for Applicant. In reaching this conclusion, I gave due consideration to the nine-factor whole-person concept.³⁸

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the security concerns under Guideline F. Applicant met her ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for 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:	For Applicant
Subparagraphs 1.a–1.j:	For Applicant

³⁸ Revised Guidelines, ¶ 2(a)(1) – (9).

Conclusion

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

Michael H. Leonard
Administrative Judge