



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



In the matter of:)
)
-----) ISCR Case No. 09-01684
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Michael Lyles, Esq., Department Counsel
For Applicant: -----, Personal Representative

March 29, 2010

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. The record evidence shows Applicant has a history of financial problems or difficulties, which occurred due to business failures and unemployment. The business failures had a serious effect because both Applicant and her husband relied on the businesses for their income. The record evidence also shows that two debts are paid, two debts are in the process of settlement, and payments on the mortgage loans are ongoing. Applicant is making a good-faith effort, with the support of her parents-in-law, to resolve the delinquent debts. Accordingly, as explained below, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on July 27, 2009, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find it is clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual basis for the action under the security guideline known as Guideline F for financial considerations. The SOR also recommended that the case be submitted to an administrative judge to decide whether or not to deny or revoke Applicant's security clearance.

Applicant answered the SOR in a timely fashion and requested a hearing. She admitted five of the six delinquent debts alleged in the SOR. The case was assigned to me October 2, 2009. The hearing took place November 17, 2009. The transcript (Tr.) was received December 8, 2009.

The record was held open until December 18, 2009, to allow Applicant to present additional documentary evidence. Applicant made a timely submission and the post-hearing matters are admitted as Exhibit C.

Findings of Fact

Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 30-year-old employee of a federal contractor. She is seeking to obtain an industrial security clearance for the first time. She earned a bachelor's degree in finance in 2002. She has worked for her current employer since October 2006, and she has since been promoted twice. Her current position is program assistant, and her current annual salary is about \$42,000.²

Applicant married her husband in 2003, and they have a 20-month-old son. Before her current employment, she and her husband both worked for her father-in-law in an enterprise consisting of three businesses; namely, a motorcycle dealership, an apparel store associated with the dealership, and a gallery. She and her husband also obtained their licenses to sell real estate. When things were going well, Applicant and her husband earned reasonable incomes drawn from the businesses. For 2003, she

¹ 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 DoD 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 to this case. They replace the guidelines published in Enclosure 2 to the Directive.

² Tr. 129.

estimated their gross income at between \$50,000 to \$75,000; for 2004, she estimated more than \$100,000.³

None of the three businesses are currently operating. The dealership was sold at a loss in 2006, and the other two businesses were closed during 2006 due to a decline in business attributable to economy. Applicant sought work and began her current job in October 2006. Her husband sought work as well, but with less success. He obtained a job with an aerospace firm in September 2007, but he was laid-off due to downsizing in May 2008. He has been essentially unemployed but actively looking for a job since May 2008. He reactivated his real estate license and affiliated with a real estate firm in January 2009. So far, he has closed one transaction. His gross income since May 2008 is less than \$7,000.⁴

The business failures caused serious financial problems for Applicant and her husband, as reflected in documentary exhibits.⁵ The SOR alleged six delinquent debts, to include a past-due mortgage loan and a past-due loan for a second mortgage. The debts are addressed below in sequence per the SOR.

The collection account for \$1,029 in SOR ¶ 1.a stems from a credit card account issued by an oil and gas company. It was turned over to a collection agency, which has agreed to settle the account for a lump-sum payment of \$650 by December 8, 2009.⁶

The collection account for \$582 in SOR ¶ 1.b stems from a credit card account issued by a woman's clothing store. It was turned over to a collection agency, and Applicant paid or settled the account for \$378 in August 2009.⁷

The collection account for \$2,153 in SOR ¶ 1.c stems from a credit card account issued by a clothing store. It was turned over to a collection agency, which has offered Applicant an option to settle the account for \$1,885.⁸

The past-due accounts in SOR ¶¶ 1.d and 1.e concern the first and second mortgages on Applicant's home. Applicant and her husband have entered into agreements to bring the mortgage loans current. Documentary information shows regular payments were made on both accounts during 2009.⁹

³ Tr. 125–126.

⁴ Tr. 83.

⁵ Exhibits 3, 4, 5, and 6.

⁶ Exhibit C, Attachment 1A.

⁷ Exhibit A, Attachment 1; Exhibit B; and Exhibit C, Attachment 1B.

⁸ Exhibit C, Attachment 1C.

⁹ Exhibit A, Attachments 2 and 3; and Exhibit C, Attachments 1.D and 1.E.

Applicant denies responsibility for the \$177 unpaid judgment alleged in SOR ¶ 1.f. This debt stems from a rental property owned by her father-in-law, but informally managed by her husband. The tenant obtained household services from a contractor, and the contractor billed Applicant and her husband. In 2007, the contractor sought payment by obtaining a small claims court judgment against Applicant and her husband.¹⁰ The matter was resolved in July 2009, when Applicant's father-in-law paid the contractor the amount in full.¹¹

Applicant and her husband completed credit counseling, which included developing a written monthly budget.¹² The budget reveals Applicant and her husband are living within their means with a small positive net remainder. The budget also reveals a sizeable amount of extra income (\$4,315), and these monies are provided by Applicant's parents-in-law. Her mother-in-law lives with Applicant and her husband, and the mother-in-law is able to assist with child care and other household matters while the father-in-law works for another defense contractor at another location. The father-in-law is providing the financial support due to Applicant and her husband's involvement with the failed businesses, and the father-in-law intends to continue doing so until Applicant and her husband get back on their feet financially.

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.¹³ 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."¹⁴ 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.¹⁵ An

¹⁰ Exhibit 2.

¹¹ Exhibit A, Attachment 4.

¹² Exhibit C.

¹³ *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).

¹⁴ 484 U.S. at 531.

¹⁵ Directive, ¶ 3.2.

unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁶

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁷ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁰ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²¹ The Agency's appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²²

The Adjudicative Guidelines set forth the relevant standards 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 of an applicant's loyalty.²³ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

¹⁶ Directive, ¶ 3.2.

¹⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁸ Directive, Enclosure 3, ¶ E3.1.14.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ Directive, Enclosure 3, ¶ E3.1.15.

²¹ *Egan*, 484 U.S. at 531.

²² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²³ Executive Order 10865, § 7.

Analysis

Under Guideline F for financial considerations,²⁴ 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.²⁵

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

The record evidence supports a conclusion that Applicant has a history of financial problems or difficulties as shown by the findings of fact. Applicant and her husband took the risk of not diversifying their sources of income. When the businesses failed, they experienced serious financial problems that likely would have resulted in bankruptcy but for the assistance received from Applicant's in-laws. This history raises concerns because it indicates inability or unwillingness to satisfy debts²⁶ and a history of not meeting financial obligations²⁷ within the meaning of Guideline F. The facts are more than sufficient to establish these two disqualifying conditions.

Under ¶ 20 of Guideline F, there are six conditions that may mitigate security concerns.²⁸ The six conditions are as follows:

(a) 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;

(b) The conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business

²⁴ AG, ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁵ AG, ¶ 18.

²⁶ AG, ¶ 19(a).

²⁷ AG, ¶ 19(c).

²⁸ AG, ¶ 20 (a) – (f) (setting forth six mitigating conditions).

downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) 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;

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

(e) 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; and

(f) The affluence resulted from a legal source of income.

Here, the most pertinent mitigating conditions are ¶¶ 20(a), 20(b), 20(d), and 20(e), and each is discussed below.

First, ¶ 20(a) applies in Applicant's favor because her financial problems occurred under circumstances unlikely to recur, as established by the business failures in 2006. The businesses have ceased operations and Applicant has had no involvement with the businesses since then. She sought and obtained employment in a different career field, the defense industry, and has twice been promoted making it unlikely that she will return to her previous business career.

Second, ¶ 20(b) applies in Applicant's favor because her financial problems occurred due to circumstances largely beyond her control, as established by the business failures in 2006. In addition, her husband's unemployment and underemployment since 2006 are also circumstances largely beyond her control. She acted responsibly under the circumstances by finding employment in 2006, and taking measures to achieve financial stability as opposed to walking away from the financial obligations via bankruptcy. Applicant and her husband have likely had to swallow their pride and give up some independence by relying her parents-in-law to get them through this difficult time, but that is what responsible families do when facing difficult times.

Third, ¶ 20(d) applies in Applicant's favor as well. She made good-faith efforts to resolve the delinquent debts as shown in the findings of fact. The record evidence shows that two debts are paid, two debts are in the process of settlement, and payments on the mortgages are ongoing.

Fourth, ¶ 20(e) applies in Applicant's favor for the unpaid judgment for \$177, which is attributed to her father-in-law's rental property. And in any event, the judgment is now paid.

To conclude, the facts and circumstances surrounding Applicant's history of financial problems or difficulties do not justify current doubts about her judgment, reliability, and trustworthiness in a security-clearance context. She presented sufficient evidence to explain, extenuate, or mitigate the security concerns. In reaching this conclusion, I gave due consideration to the whole-person concept.²⁹ In particular, I considered the circumstances surrounding the financial problems (for example, the business failures and her husband's lack of employment), and I also considered the potential for pressure, coercion, exploitation, or duress and assess that potential as unlikely to remote in this case. Although Applicant did not present a perfect case in mitigation, she presented sufficient evidence to meet 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 are as follows:

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

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

²⁹ AG, ¶ 2(a)(1) – (9).