



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-01712
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nichole Noel, Esq., Department Counsel
For Applicant: *Pro se*

November 24, 2010

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke her eligibility for a security clearance to work in the defense industry. Applicant has a history of financial problems, which are ongoing. That history includes a Chapter 7 bankruptcy case in 2001, and more recently delinquent accounts, repossession of a vehicle, and foreclosure upon a rental property. Applicant failed to present sufficient evidence to overcome the security concerns raised by her history of financial problems. Accordingly, as explained below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on August 10, 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 to deny or revoke Applicant's security clearance.

Applicant answered the SOR in a timely fashion. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

On or about September 1, 2010, the Agency submitted its written case consisting of all relevant and material information that could be adduced at a hearing.³ This so-called file of relevant material (FORM) was mailed to Applicant and received by her on September 16, 2010. She then had a 30-day period to submit a response setting forth objections, rebuttal, extenuation, mitigation, or explanation. To date, she has not replied. The case was assigned to me November 8, 2010.

Findings of Fact

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

Applicant is a 54-year-old employee of a federal contractor, and she completed a security clearance application in November 2008.⁴ In the application, she reported working for the same company in various capacities since 1980 except for the period November 2000 to May 2002, when she was laid off. She is currently working as a quality control inspector. She was unemployed for a month after the job layoff in 2000. She then worked as a sales clerk at a department store from December 2000 to August

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. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² Directive, Enclosure 3, ¶ E3.1.7.

³ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which are identified as exhibits in this decision.

⁴ Exhibit 4.

2001, and as an administrative assistant for a local police department from August 2001 to May 2002, when she was recalled by her current employer. Her employment history also includes working as a part-time aerobic instructor or fitness trainer since 1990.

Applicant has married and divorced twice, and she is currently living with a man in a spouse-like relationship. She has two children, daughters, born in 1986 and 1989, both of whom live with Applicant. In addition to her two adult children, a granddaughter, born in 2008, lives with Applicant. The 21-year-old son of her partner also lives in the household. Applicant's father is deceased, but her mother lives nearby.

Applicant has a history of financial problems that began shortly after her job layoff in 2000. As a result, Applicant was unable to meet her financial obligations and sought relief via a Chapter 7 bankruptcy case, which is alleged in SOR ¶ 1.a. The case was filed in about September 2001, and the court granted Applicant a discharge in bankruptcy in January 2002.⁵ The record is silent concerning the number of creditors, the estimated assets, and the estimated liabilities in the bankruptcy case. Applicant attributes the bankruptcy to the job layoff and the resulting 18-month period of unemployment and underemployment.⁶

In addition to the Chapter 7 bankruptcy case, Applicant reported more recent financial problems in her 2008 security clearance application as follows: (1) foreclosure upon a rental property; (2) repossession of two vehicles; (3) a delinquent credit card account charged off as a bad debt; and (4) a delinquent utility account on the rental property. These debts, all of which are alleged in the SOR, are addressed below.

In response to SOR ¶ 1.b, Applicant admits a \$1,116 collection account that began as a credit card or charge account with a large store. She fell behind on the account in 2007, and the account was charged off and then placed for collection with the current creditor.⁷ Applicant reports that she contacted the creditor and was negotiating the matter.⁸ Applicant did not present any documentation on this debt.

In response to SOR ¶ 1.c, Applicant admits that a rental property, purchased in 2003, was subject to foreclosure. She reports that she fell behind on the mortgage loan payments in 2007, when her tenants stopped paying monthly rent and she was unable to keep up with the payment. A 2008 credit report describes the loan as 180 days past due in the amount of \$8,219 with a balance of \$54,283.⁹ A 2009 credit report shows the

⁵ Exhibit 9.

⁶ Answer to SOR.

⁷ Exhibits 7, 8, and 9.

⁸ Answer to SOR.

⁹ Exhibit 9.

loan was past due in the amount of \$11,155.¹⁰ And a 2010 credit report indicates the loan was past due in the amount of \$19,000 and in foreclosure.¹¹ Applicant reports that the home was sold via foreclosure in August 2009, and she is waiting to hear if she owes a deficiency balance.¹² Applicant did not present any documentation on this debt.

In response to SOR ¶ 1.d, Applicant denies indebtedness stemming from repossession of a vehicle. Applicant reports that this debt resulted from her partner's purchase of a truck for his son who then failed to make the loan payments. She denies that she cosigned for the loan, although her partner did so. Although this account appears on Applicant's credit reports as a repossession, all three credit reports show a zero balance as well as a zero past-due balance on the account.¹³ Applicant did not present any documentation on this debt.

In response to SOR ¶ 1.e, Applicant admits indebtedness of \$9,429 stemming from repossession of a vehicle. Applicant reports this debt resulted from her cosigning a loan with her daughter who then failed to make the loan payments when she was unable to work due to pregnancy. The 2008 and 2009 credit reports describe this debt as a repossession or charged-off account in the amount of \$9,429.¹⁴ The 2010 credit report shows the debt was transferred or sold to another creditor.¹⁵ Applicant did not present any documentation on this debt.

In response to SOR ¶ 1.f, Applicant admits indebtedness of \$329 stemming from a utility bill for her rental property. Applicant reports that she contacted the utility and offered to make weekly payments of \$25, but the utility could not locate the account. Both the 2008 and 2010 credit reports describe it as a charged-off account.¹⁶ Applicant did not present any documentation on this debt.

Applicant reports that her current financial problems stem from circumstances beyond her control.¹⁷ She reports that her mother became ill and she had to assume responsibility for her mother's care and expenses. And about the same time, her daughter became pregnant and was unable to work, resulting in Applicant covering her daughter's expenses as well.

¹⁰ Exhibit 8.

¹¹ Exhibit 7.

¹² Answer to SOR.

¹³ Exhibits 7, 8, and 9.

¹⁴ Exhibits 8 and 9.

¹⁵ Exhibit 7.

¹⁶ Exhibit 7 and 9.

¹⁷ Exhibit 6.

Applicant did not reply to the FORM. Likewise, the record is silent concerning Applicant's good employment record or constructive community involvement. The record is also silent concerning Applicant's overall financial situation; for example, her current income, her financial assets (checking or savings accounts, investment accounts, etc.), and her ability to repay any of the indebtedness addressed above along with her current financial obligations.

Law and Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. The only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information. The Department of Defense takes the handling and safeguarding of classified information seriously because it affects our national security, the lives of our servicemembers, and our operations abroad.

It is well-established law that no one has a right to a security clearance.¹⁸ As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."¹⁹ 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.²⁰ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²¹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²² The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²³ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

¹⁸ *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).

¹⁹ 484 U.S. at 531.

²⁰ Directive, ¶ 3.2.

²¹ Directive, ¶ 3.2.

²² ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²³ Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.²⁴ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁵ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁶ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁷

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

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.²⁸ 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,²⁹ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.³⁰ 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.³¹

²⁴ Directive, Enclosure 3, ¶ E3.1.15.

²⁵ Directive, Enclosure 3, ¶ E3.1.15.

²⁶ *Egan*, 484 U.S. at 531.

²⁷ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁸ Executive Order 10865, § 7.

²⁹ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

³⁰ See ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted).

³¹ AG ¶ 18.

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information within the defense industry. Indeed, the practice of evaluating a person based on their record of financial responsibility (or lack thereof) is used in various industries. For example, the insurance industry uses credit-based insurance scores when determining insurance rates because the scores have been found to be effective in predicting future losses.

The evidence here, except for the repossession of her partner's son's truck and resulting indebtedness, supports a conclusion that Applicant has a history of financial problems. That repossession is not fairly attributable to Applicant, and SOR ¶ 1.d is resolved in her favor. Her history of financial problems raises security concerns because it indicates inability or unwillingness to satisfy debts³² and a history of not meeting financial obligations³³ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions.

Under Guideline F, there are six conditions that may mitigate security concerns.³⁴

20(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;

20(b) 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;

20(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;

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

20(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

³² AG ¶ 19(a).

³³ AG ¶ 19(c).

³⁴ AG ¶ 20 (a) – (f).

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

Of those mitigating conditions, the most pertinent here are subparagraphs 20(a) and 20(b). It appears Applicant's financial problems were caused by unique circumstances largely beyond her control—the job layoff in 2000 and the nonpaying tenants in 2007. Both events led to major financial problems—the bankruptcy and the foreclosure on the rental property. In addition, family circumstances placed a financial burden on Applicant.

Applicant is required to act responsibly under the circumstances in order to receive full credit in mitigation under subparagraph 20(b), and she has not met that requirement. A responsible applicant would have made the effort to present documentation in support of her case. Applicant did not present any documentation showing the current status of the debts in the SOR. Likewise, she did not present documentary proof of payment, in full or in part, of the debts. Applicant did not present documentary evidence of her ability to repay. And she failed to present a realistic plan of action to resolve the indebtedness. Lacking such a plan, as well as any measurable progress in working the plan, the credit in mitigation is insufficient to mitigate the security concerns. Indeed, had Applicant paid the two smallest debts (the \$1,116 collection account and the \$329 utility account) and presented documentation showing some progress on the other two debts, I might have decided this case for her. But based on this record, a favorable decision is not justified. At bottom, Applicant's ongoing financial problems raise doubts or questions about her judgment, reliability, and trustworthiness.

To conclude, following *Egan* and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept.³⁵ 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 are as follows:

Paragraph 1, Guideline H:	Against Applicant
Subparagraphs 1.a, 1.b, 1.c, 1.e, 1.f:	Against Applicant
Subparagraph 1.d:	For Applicant

³⁵ AG ¶ 2(a)(1) – (9).

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