



SSN: _____

Applicant for Security Clearance

ISCR Case No. 09-03061

Appearances

For Government: Michael Lyles, Esq., Department Counsel
For Applicant: *Pro se*

June 10, 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. The record evidence shows Applicant has a history of financial problems, which she does not dispute. The record evidence also shows that her financial problems are the result of a combination of circumstances largely beyond her control; she has obtained financial counseling and education; and her financial problems are being resolved through a Chapter 13 bankruptcy case, which also amounts to a good-faith effort to repay creditors or otherwise resolve the debts under the facts of this case. There is sufficient evidence to explain, extenuate, or mitigate the security concerns stemming from her history of financial problems. Accordingly, as explained in further detail below, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on November 18, 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 and requested a hearing. The case was assigned to me February 2, 2010. The hearing took place April 6, 2010. The hearing transcript (Tr.) was received April 14, 2010.

The record was kept open to allow Applicant to submit additional documentary matters. She did so in a timely fashion, and those documents are admitted, without objections, as Exhibits O through U. The record closed April 16, 2010.

Findings of Fact

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

Applicant is a 31-year-old employee of a federal contractor. She is now a single parent with two young children at home. She is employed as an information technology manager. In addition, she serves as information assurance officer and unit software licensing manager for the military client her employer supports. Her current annual salary is about \$70,000. She is seeking to retain a security clearance previously granted to her.

She began living with her current husband in 2007, they married in 2008, and they are now separated and pending divorce. She has a six-year-old son from a previous relationship and a 19-month-old son from her marriage. She does not receive child support payments for the benefit of her children, but she is in the process of seeking it from both fathers.

Applicant's employment history with federal contractors dates back to 1999, when she began a job as a computer operator. She has since worked as a work group

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.

manager and as an engineer assistant. She began working for her current employer in about May 2008.

Applicant has a history of financial problems,² which she traces to 2007, when she became involved with the man whom she is now divorcing. Before that, she reports that she handled her finances in a responsible manner as shown by owning several paid for vehicles and buying and selling a home for a profit. In 2007, she earned about \$52,000 annually working for her then employer. The couple moved in together in 2007, she with her son, and he with his son. He was laid off from his job in about August 2007, the same month she became seriously ill, which resulted in a short-term disability for about two months at 60% of her salary.³ She returned to work in October 2007. She learned she was pregnant in November 2007, and this pregnancy, like her first, had complications.

By January 2008, Applicant was concerned about falling behind on her financial obligations. She consulted a bankruptcy attorney to explore her options.⁴ In addition, she notified her company's security manager of her situation.⁵ She reported that medical bills (from her and her son, who had several surgeries for ear problems, tonsils, and adenoids⁶) caused her to fall behind on her bills and that she had made an appointment to see a bankruptcy attorney.

The couple married in February 2008. In May 2008, Applicant decided to change jobs to earn a higher salary since she was concerned about supporting a household of two adults and soon to be three children. Although the new job had a higher salary of \$64,000, the job change resulted in some financial strain because she went without a salary for about six weeks due to the pay-period system with her new employer and tuition reimbursement to her former employer.⁷

During this period, Applicant's husband found a job and worked during January–June 2008, when he was laid off again. He found a part-time job but was laid off in November 2008.⁸ Her husband did not stay home and care for the children during his periods of unemployment. This situation required Applicant to pay for childcare expenses.

² Exhibits 1, 2, 3, and 4.

³ Tr. 56–58.

⁴ Tr. 65.

⁵ Exhibit L.

⁶ Tr. 48.

⁷ Tr. 49–50.

⁸ Exhibit A.

At this point in about June 2008, Applicant had been on her new job for about a month when her pregnancy grew more complicated. She was admitted June 30, 2008, and discharged a few days later with orders for strict bed rest due to premature labor.⁹ As a result, Applicant then began a combination of family and medical leave from work on July 7, 2008, and she was approved for short-term disability benefits. Her income was again reduced to 60% of her salary and her husband was again unemployed.

Her son was born in August 2008. Applicant returned to work in about October 2008, and she was required to reimburse her employer for the benefits paid on her behalf while she was on short-term disability.¹⁰ As a result, she went about a month without a paycheck.

Returning home after child birth, Applicant learned a vehicle was repossessed when she was in the hospital.¹¹ In addition, Applicant learned her husband was not taking care of their bills as she expected. She had to get utility services restored, and she resumed loan payments to a credit union and repaid the loans in full.¹²

By May 2009, Applicant felt she had given her husband every chance to find a job, and he was still unemployed (and he remains so as far as she knows).¹³ She asked him to leave, and she placed her stepson with her mother-in-law. Applicant then removed her sons from day care and placed them with a close friend (a woman who is the functional equivalent of her children's grandmother) who agreed to provide childcare at no expense to Applicant.¹⁴ Also in an effort to reduce monthly expenses, Applicant worked with her landlord (her father) to reduce her rent in exchange for cleaning his home on a monthly basis. Likewise, Applicant changed her medical, dental, and vision benefits coverage by eliminating her husband and stepson,¹⁵ which reduced her expenses further.¹⁶

In November 2009, the Agency issued the SOR to Applicant. The SOR alleges 25 delinquent debts with various creditors for a total of approximately \$45,000. More than half of the debts, about 14, are medical creditors stemming from medical expenses

⁹ Exhibit M.

¹⁰ Tr. 52.

¹¹ Tr. 86.

¹² Tr. 69–70; Exhibits I, Q, S, and T.

¹³ Tr. 52.

¹⁴ Tr. 52–53.

¹⁵ Exhibit J.

¹⁶ Tr. 41.

not covered or paid by Applicant's healthcare insurance. She denied five of the debts for various reasons, but otherwise admitted the indebtedness alleged.

In December 2009, Applicant retained the bankruptcy attorney to represent her in a Chapter 13 bankruptcy case.¹⁷ Applicant completed the mandatory counseling on February 22, 2010.¹⁸ In addition, Applicant completed three other computer-based courses on the subjects of credit, financial first aid, and financial planning.¹⁹ The bankruptcy petition was filed the following day.²⁰ It includes a Schedule F listing unsecured creditors for about \$81,000. This total amount is higher than the SOR total amount because it includes student loans that Applicant intends to pay outside of the bankruptcy. Many of the debts, about 25, listed in the Schedule F are for medical creditors or medical bills.

According to her bankruptcy attorney, they have proposed a plan that would have Applicant pay her creditors back in full over the life of the Chapter 13 case at the rate of \$455 semimonthly for 60 months for a total of \$54,600.²¹ Applicant has also agreed to increase her payment if necessary and she has committed her tax refunds to the plan, which may result in a shorter plan length.²² The bankruptcy case is now ongoing, and the attorney anticipates it will go to the bankruptcy judge for final approval in August 2010.²³ The attorney views Applicant's case as fairly routine and anticipates the plan will be approved as proposed.²⁴ Based on her current income and expenditures, Applicant has a positive cash flow and is able to make the bankruptcy payment.²⁵ Applicant began making her expected semimonthly payments in March 2010, and had made two payments when the record closed.²⁶

Also in March 2010, Applicant initiated a child-support case against the father of her eldest son.²⁷ That matter is pending. In the same month, Applicant's youngest son

¹⁷ Exhibit G.

¹⁸ Exhibit H.

¹⁹ Exhibit H.

²⁰ Exhibit N.

²¹ Exhibits G and P.

²² Exhibit P.

²³ Exhibit P.

²⁴ Exhibit P.

²⁵ Exhibits B, C, D, and N.

²⁶ Exhibits G and U.

²⁷ Exhibit K.

was accidentally burned by hot water in the bathroom.²⁸ The medical treatment results in out-of-pocket expenses for Applicant, because she is responsible for 10% while her healthcare insurance covers 90% of the medical expenses.²⁹

Several individuals submitted letters in support of Applicant's security clearance application.³⁰ Both her childcare provider and landlord (her father) submitted letters in which they vouched for Applicant's good character and trustworthiness. They also corroborated Applicant's testimony about her efforts to get her finances on track. Also, current and previous coworkers vouched for Applicant's good character and trustworthiness. In particular, a field grade military officer, who is Applicant's direct government oversight, wrote a strong letter of recommendation vouching for her trustworthiness, devotion, and loyalty to her job and this country. He described Applicant as a key player, a hard worker, and a valuable employee. He had sufficient trust in Applicant that he recommended she take on the roles of information assurance officer and unit software licensing manager, roles in which she has excelled and improved the unit's ability to protect information.

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.³¹ 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."³² 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.³³ An

²⁸ Tr. 86–89.

²⁹ Exhibit G.

³⁰ Exhibit E.

³¹ *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).

³² 484 U.S. at 531.

³³ 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.³⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.³⁵ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³⁶ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³⁷ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³⁸ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³⁹ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.⁴⁰

The Adjudicative Guidelines set forth the relevant standards 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 of an applicant's loyalty.⁴¹ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

³⁴ Directive, ¶ 3.2.

³⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³⁶ Directive, Enclosure 3, ¶ E3.1.14.

³⁷ Directive, Enclosure 3, ¶ E3.1.15.

³⁸ Directive, Enclosure 3, ¶ E3.1.15.

³⁹ *Egan*, 484 U.S. at 531.

⁴⁰ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁴¹ Executive Order 10865, § 7.

Analysis

Under Guideline F for financial considerations,⁴² 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.⁴³

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

The record here supports a conclusion that Applicant has a history of financial problems or difficulties as shown by the large amount of delinquent debt that she is now facing. This history raises concerns because it indicates inability or unwillingness to satisfy debts⁴⁴ and a history of not meeting financial obligations⁴⁵ within the meaning of Guideline F. The facts are more than sufficient to establish these two disqualifying conditions.

Under Guideline F, there are six conditions that may mitigate security concerns.⁴⁶ 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 downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances

⁴² AG, ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

⁴³ AG, ¶ 18.

⁴⁴ AG, ¶ 19(a).

⁴⁵ AG, ¶ 19(c).

⁴⁶ AG, ¶ 20 (a) – (f) (setting forth six mitigating conditions).

(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.

The record evidence here supports a conclusion that ¶¶ 20(b), 20(c), and 20(d) apply in Applicant's favor.

First, Applicant's financial problems resulted from a combination of circumstances largely beyond her control and she did not act irresponsibly when experiencing these circumstances. The medical problems and expenses, her periods of unemployment when she was on short-term disability, her husband's periods of unemployment, the current separation and pending divorce, and the lack of child-support payments are circumstances largely beyond her control that had a negative effect on her financial stability.

Second, Applicant has received financial counseling and taken additional classes on her own. Moreover, there are clear indications that, since she separated from her husband in May 2009, Applicant has taken charge of her finances, reduced her expenses, and the larger problem is being resolved through the bankruptcy case.

Third, Applicant is making a good-faith effort to repay her overdue creditors or otherwise resolve the debts by pursuing the Chapter 13 bankruptcy case. Unlike a Chapter 7 case where a debtor is no longer required to pay their debts and creditors are barred from further collection activity, in a Chapter 13 case (also referred to as a wage-earner's plan) the bankruptcy court approves a realistic plan where the debtor pays back the debts over a certain period (three to five years is common). While an applicant pursuing a Chapter 7 case is entitled to claim little good-faith effort, the same cannot be said for an applicant pursuing a Chapter 13 case. That is the case for this Applicant, as she has proposed a plan to pay her creditors in full and has made the initial payments.

Looking forward, I am persuaded that Applicant will successfully complete her Chapter 13 plan, once it is approved, as she has already made initial payments. In this regard, I am also impressed and persuaded by Applicant's persistence and determination. The evidence shows she has faced challenging and difficult circumstances in the past and some of those matters are ongoing. Many people would give up under these circumstances and simply take the easy way out via a Chapter 7

case, but Applicant is doing just the opposite. Her persistence and determination under these circumstances show true strength of character, which speaks volumes about her judgment, reliability, and trustworthiness.

To conclude, the facts and circumstances surrounding Applicant's financial problems do not justify current doubts about her judgment, reliability, and trustworthiness. In reaching this conclusion, I gave due consideration to the whole-person concept⁴⁷ and the adjudicative factors applicable to individuals who currently have a security clearance.⁴⁸ Concerning the latter factors, a core value of the industrial security clearance program is willingness to self-report adverse information. Here, Applicant receives substantial credit in mitigation because she self-reported her financial problems in January 2008. In addition, she sought assistance and followed the professional guidance of a bankruptcy attorney; she appears likely to favorably resolve the financial problems via the Chapter 13 case, although doing so will take time; and she has demonstrated positive changes in behavior by ending an unhealthy marriage, reducing her living expenses, and getting her finances under her control. Based on the record evidence as a whole, I have no doubts or concerns about Applicant's security suitability or fitness. 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 are as follows:

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

⁴⁷ AG, ¶ 2(a)(1) – (9).

⁴⁸ AG, ¶ 2(e)(1) – (6).