



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



In the matter of:)
)
-----) ISCR Case No. 09-04526
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. Delaney, Esq., Department Counsel
For Applicant: *Pro se*

April 16, 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. The main cause of her financial problems was her use of crystal methamphetamine during 2003–2004. She has had full-time employment since mid-2006. She did not present any documentary evidence supporting her claim that she has entered into a debt-consolidation plan to resolve her more than \$12,000 in delinquent debt. The record contains insufficient evidence to explain, extenuate, or mitigate the security concerns stemming from 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 November 19, 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 she requested a decision without a hearing. Accordingly, the case will be decided on the written record.²

On January 13, 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 January 26, 2010. She then had 30 days to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, but she did not respond within the 30-day period. The case was assigned to me March 29, 2010.

Findings of Fact

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

Applicant is a 28-year-old laboratory technician for a science and technology organization. She is married with two young children, a daughter born in 2005 and a son in 2009. Also, she has two stepchildren who reside in another state.

Her employment history includes full-time employment dating back to August 2006, except for two periods of unemployment. The first period of unemployment was for about nine months in 2004. The second period took place during January 2005 to August 2006. She began her current job in March 2008.

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 Directive, Enclosure 3, ¶ E3.1.7.

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

Applicant has a history of financial problems (delinquent consumer debt). During the background investigation, she explained that the main cause of her financial problems was her use of crystal methamphetamine during the period November 2003 to July 2004.⁴ She stated that she used the drug daily during this period. Her drug abuse resulted in indebtedness and caused her problems at work. She stopped the drug abuse in 2004, when she learned she was pregnant with her first child.

The SOR alleges five delinquent debts with various creditors for a total of approximately \$12,900. The delinquent debts are established by Applicant's admissions and the information in the credit reports.⁵ In her Answer to the SOR, she admitted the five delinquent debts as well as that her past drug abuse resulted in her inability to meet her financial obligations. She claimed that her debts were consolidated, and she is now working to pay them off. She stated that she had paid \$1,357 to date, and that she planned to continue making a monthly payment of \$189.

She did not present documentary evidence showing she has paid, settled, or resolved any of the debts. She did not present documentary evidence of the debt-consolidation plan. She did not present documentary evidence showing her overall financial condition as well as her ability to repay the delinquent debts at issue. And she did not present documentary evidence showing her income or her husband's income.

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.⁶ 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."⁷ 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.

⁴ Exhibit 6.

⁵ Exhibits 6, 7, 8, and 9.

⁶ *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).

⁷ 484 U.S. at 531.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁸ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁰ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹¹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹² In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹³ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁴ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁵

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.¹⁶ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

⁸ Directive, ¶ 3.2.

⁹ Directive, ¶ 3.2.

¹⁰ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹¹ Directive, Enclosure 3, ¶ E3.1.14.

¹² Directive, Enclosure 3, ¶ E3.1.15.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ *Egan*, 484 U.S. at 531.

¹⁵ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁶ Executive Order 10865, § 7.

Analysis

Under Guideline F for financial considerations,¹⁷ 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.¹⁸

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. This history raises concerns because it indicates inability or unwillingness to satisfy debts¹⁹ and a history of not meeting financial obligations²⁰ within the meaning of Guideline F. The facts are more than sufficient to establish these two disqualifying conditions, and they suggest financial irresponsibility as well. In addition, the history raises concerns because her financial problems were linked to her drug abuse during 2003–2004.²¹

Under Guideline F, there are six conditions that may mitigate security concerns.²² 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;

¹⁷ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁸ AG ¶ 18.

¹⁹ AG ¶ 19(a).

²⁰ AG ¶ 19(c).

²¹ AG ¶ 19(f).

²² AG ¶ 20 (a) – (f) (setting forth six mitigating conditions).

(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;

(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 most pertinent here are ¶¶ 20(b) and 20(d), and both are discussed below.

Applicant receives credit in mitigation under ¶ 20(b). It is most probable that her financial problems stem, in part, from the two periods of unemployment. The credit is limited somewhat, however, because she has been working full-time since mid-2006, a period of nearly four years.

Applicant receives no credit in mitigation under ¶ 20(d). The evidence does not show that she has made a good-faith effort to repay her delinquent debts. Applicant's statements—unsupported by reliable documentary evidence—that she has entered into a debt-consolidation plan and has paid more than \$1,300 cannot be given much weight. Her unsupported statements deserve the same weight as mere promises to pay in the future.

Although there is some evidence in mitigation, the credit in mitigation is insufficient to overcome the security concerns. Her financial problems date to several years ago. But she has worked full-time since mid-2006, making little progress in resolving her financial problems. Looking forward, it is too soon to rule out the likelihood of additional financial problems. What is missing here is a well-established track record of repayment of her delinquent debts. Although she may have good intentions, her track record at this point is insufficient to make any safe predictive judgments about the future.

To conclude, the facts and circumstances surrounding Applicant's ongoing financial problems justify current doubts about her judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent standard, these doubts are resolved in favor of protecting national security. In reaching this conclusion, I gave due

consideration to the whole-person concept²³ and Applicant's favorable evidence. Nevertheless, 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 F: | Against Applicant |
| Subparagraphs 1.a–1.f: | 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

²³ AG ¶ 2(a)(1) – (9).