



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-06349
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esq., Department Counsel
For Applicant: *Pro se*

October 20, 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 evidence shows Applicant has a history of financial problems as shown by past-due mortgage loans on two residential properties that were later sold via short sales. A balance of more than \$70,000 is owed on the second mortgage loan for the second property. Applicant does not have a concrete plan in place to resolve this debt, which is now in collection with a third party. Her ongoing financial problems justify current doubts about her judgment, reliability, and trustworthiness. Accordingly, as explained in further detail below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on June 15, 2010, 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 August 4, 2010. The hearing took place as scheduled on September 9, 2010.

The record was kept open until October 8, 2010, to allow Applicant an opportunity to submit additional documentary evidence. Applicant made a timely submission and that document is admitted without objections as Exhibit I, as Applicant's Exhibits A–H were admitted during the hearing.

Findings of Fact

Applicant is a 28-year-old employee of a federal contractor. Her educational background includes graduating from high school and taking some college courses at a community college. She is employed as a senior human resources associate, and she has worked for this company since 2004. She appears to be a reliable, competent employee as shown by the favorable performance reviews received during the last several years.² She is known as an employee who has integrity and who exercises good judgment.³

Applicant is married and has two children, an eight-year-old daughter and a three-year-old son. Her husband is employed as a shop manager for an automobile body shop. Together, Applicant reported that she and her husband earned a gross income of about \$105,000 in 2009.⁴

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 Exhibits C–H.

³ Exhibit B.

⁴ Exhibit 3.

During the recent real estate boom and bust, Applicant and her husband bought two residential properties (referred to as Property #1 and Property #2).⁵ Both properties were financed with a first and second mortgage, and all four mortgages became past due. Both properties were sold via short sales, one in 2009 and the other in 2010. Applicant and her husband appear to have no ongoing liability for Property #1, but that is not the case for Property #2.

Applicant and her husband bought Property #1 in 2005 for about \$300,000. The purchase was financed with the same lender with two mortgage loans of \$233,280 and \$58,320.⁶ They lived in this home for about two years and four months until they bought their second property. They then rented Property #1 for less than their mortgage loan payments. The tenant moved out at some point. They were unable to keep up with the required payments and the loans became past due in 2008. Property #1 was sold via a short sale in October 2009 for \$140,000, which included a payoff of about \$124,000 to the lender.⁷ The most recent credit report indicates that the mortgage loans have zero balances and the accounts are described as paid for less than full balance.⁸

Applicant and her husband bought Property #2 in 2007 for about \$500,000. The purchase was financed with different lenders with two mortgage loans. The first mortgage loan was for \$417,000; the second mortgage loan was for \$80,000. For a time, Applicant's sister-in-law lived with them and paid \$600 rent, but she moved out. They were unable to keep up with the required payments and the loans became past due in 2009. They vacated Property #2 in September 2009, and moved into their current residence, which they are renting. Property #2 was sold via a short sale in June 2010 for \$300,000, which included a payoff of about \$276,801 to the first lender and about \$3,000 to the second lender.⁹ The first lender considers the mortgage loan paid in full.¹⁰ But the second lender charged off the account with a balance of about \$78,000, and the debt is now in collection with a third party. Applicant presented no documentary evidence from the third party. Her husband has had some contact with the third party, but they have been unable to reach an accord or devise a plan to resolve the debt.¹¹

⁵ The SOR alleges the mortgage loans for Property #2, but not for Property #1. The mortgage loans for Property #1 are relevant to provide the context or history of Applicant's financial situation.

⁶ Exhibit 6.

⁷ Exhibit 2.

⁸ Exhibit 4.

⁹ Exhibit A.

¹⁰ Exhibit I.

¹¹ Tr. 45–47.

Besides the mortgage loans, the various credit reports reveal that Applicant has no other delinquent debts.¹²

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.¹³ 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.”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 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

¹² Exhibits 4–6.

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.

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.

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 DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²²

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 facts and circumstances, 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.²³ 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,²⁴ 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.²⁵ 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.²⁶

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

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.

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

²⁵ 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).

²⁶ AG ¶ 18.

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 supports a conclusion that Applicant has a history of excessive indebtedness. Her history raises security concerns because it indicates inability or unwillingness to satisfy debts²⁷ and a history of not meeting financial obligations²⁸ 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:²⁹

(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;

(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.

Of those mitigating conditions, the most pertinent here are subparagraphs (b) and (d). Applicant is entitled to little credit under subparagraph (b), however, because

²⁷ AG ¶ 19(a).

²⁸ AG ¶ 19(c).

²⁹ AG ¶ 20 (a) – (f).

there is no evidence of loss of employment by Applicant or her spouse during the relevant period, an unexpected medical emergency, or a death, divorce, or separation in Applicant's family. Certainly, Applicant and her spouse, like many other Americans, experienced an unexpected decline in values of residential real estate. But they largely brought their current problem on themselves when they financially overextended themselves by borrowing more than \$750,000 in mortgage loans on a gross annual income of about \$105,000. Debt equals risk, and these numbers show Applicant and her spouse put themselves in a high-risk situation by incurring excessive indebtedness or by living beyond their means or both.

Applicant is entitled to credit in mitigation under subparagraph (d). Applicant and her spouse disposed of both properties via short sales and were able to resolve three of the four mortgage loans. The fourth mortgage loan, the second mortgage loan on Property #2, is unresolved. It is now in collection with a third party after it was charged off by the lender. Resolving three of the four mortgage loans is making a good-faith effort, but Applicant and her spouse are still facing a large amount of delinquent debt (about \$78,000). Moreover, they do not have a concrete plan in place to resolve this debt. 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. 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 concept³⁰ and Applicant's favorable evidence, which was not insubstantial. 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant

³⁰ 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