



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-06759
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

July 12, 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 as evidenced by about \$32,000 in unpaid delinquent debts. She has been continuously employed since at least 1999, with no periods of unemployment. She did not present any documentary evidence of a good-faith effort to repay or otherwise resolve her indebtedness. There is insufficient 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 against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on January 8, 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 she did not request a hearing. Accordingly, the case will be decided on the written record.²

On March 22, 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 April 5, 2010. She then had 30 days to submit a 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 July 7, 2010.

Findings of Fact

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

Applicant is a 39-year-old employee of a federal contractor. She married in 2002 and divorced in 2005. She has a young child, a son, from a relationship that ended in separation in about September 2006.

Applicant has worked as project integrator since May 2008. As reported in her security clearance application,⁴ she has been continuously employed since at least 1999. She reported no periods of unemployment.

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 evidence, which will be identified as exhibits in this decision.

⁴ Exhibit 5.

Applicant has a history of financial problems. In her answer to the SOR, in which she admitted the debts alleged, she explained the debts are unpaid due to a separation from her son's father in about September 2006. She stated they had sufficient money for their expenditures while living together, but she cannot afford to pay the debts on her own. She stated the debts were incurred in her name and followed her when they separated.

The SOR alleges 13 delinquent debts with various creditors for a total of approximately \$32,000. The delinquent debts are established by Applicant's admissions and the information in the credit reports.⁵ Five of the debts are medical accounts in collection, six debts are collection accounts, and two debts relate to repossessions. Nine of the 13 debts range between \$30 and less than \$300. Four debts account for nearly all of the \$32,000. The two largest debts, for \$6,951 and \$23,000, are from voluntary repossessions of a motorcycle and a recreation vehicle (RV). In her security clearance application, she explained that both vehicles were purchased during her relationship and she could not maintain the payments after separating in September 2006.⁶ She returned the vehicles in March and April 2007, but deficiency balances remain unpaid.

She did not present documentary evidence showing she has paid, settled, or resolved any of the debts, to include the nine debts for relatively small amounts. She did not present documentary evidence of a realistic plan to address her indebtedness. She did not present documentary evidence showing her overall financial condition as well as her ability to repay the debts at issue.

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.⁷ 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

⁵ Exhibits 6 and 7.

⁶ Exhibit 5 at 32–33.

⁷ *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).

must, on the side of denials.”⁸ 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.⁹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁴ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁵ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁶

The AG 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.

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

⁸ 484 U.S. at 531.

⁹ Directive, ¶ 3.2.

¹⁰ Directive, ¶ 3.2.

¹¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹² Directive, Enclosure 3, ¶ E3.1.14.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ *Egan*, 484 U.S. at 531.

¹⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

person a security clearance is not a determination of an applicant's loyalty.¹⁷ 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,¹⁸ 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.¹⁹ 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.²⁰

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 record evidence here supports a conclusion that Applicant has a history of financial problems. This history raises concerns because it indicates inability or unwillingness to satisfy debts²¹ and a history of not meeting financial obligations²² within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions, and the facts suggest financial irresponsibility as well.

¹⁷ Executive Order 10865, § 7.

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

¹⁹ 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).

²⁰ AG ¶ 18.

²¹ AG ¶ 19(a).

²² AG ¶ 19(c).

Under Guideline F, there are six conditions that may, individually or in combination, mitigate security concerns:²³

(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 is subparagraph (b) due to Applicant's separation in 2006. It is most probable that her financial problems stem, in part, from the debts she incurred while living with her son's father. The credit is limited somewhat because she has been working full-time since 1999, and the separation took place in September 2006, nearly four years ago.

Applicant receives no credit in mitigation under subparagraph (d). The evidence shows she has not made a good-faith effort to repay creditors or otherwise resolve the delinquent debts. She did not submit documentary evidence showing any effort to address her unpaid delinquent debts.

Although there is some evidence in mitigation, the credit in mitigation is insufficient to overcome the security concerns. Applicant incurred substantial indebtedness when she (along with her then boyfriend) overextended herself with consumer indebtedness. Buying a motorcycle and a RV, which were likely discretionary purchases, are the best evidence on this point. Debt equals risk, and Applicant put herself in a high-risk position when she incurred the consumer debts solely in her name.

²³ AG ¶ 20 (a) – (f) (setting forth six mitigating conditions).

She is now dealing with the consequences. What is missing here is a well-established track record of repayment. Although she might have good intentions, her track record of repayment is nonexistent and does not mitigate the security concerns. Looking forward, it is too soon to rule out the likelihood of additional financial problems. Likewise, it is too soon to determine if Applicant is now conducting her affairs in a financially-responsible manner to avoid similar problems in the future. Accordingly, Guideline F is decided against Applicant.

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, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept²⁴ 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.m:	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

²⁴ AG ¶ 2(a)(1) – (9).