



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



In the matter of:)
)
-----) ISCR Case No. 09-08199
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie Hess, Esq., Department Counsel
For Applicant: *Pro se*

May 17, 2011

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. The evidence shows she has a history of financial problems (i.e., delinquent debts). Those difficulties resulted from a troubled marriage in which her husband controlled all financial matters to her detriment. She separated from her husband and obtained a divorce in 2009. She initiated a good-faith effort to repay, settle, or otherwise resolve her debts. She credibly disputed certain debts, and she is now living within her means. Applicant presented sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns stemming from her history of financial problems. Accordingly, as explained below, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ in about August 2010, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) explaining that it was not 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.

Applicant answered the SOR in August 2010, and did not request a hearing. Subsequently, in December 2010, she changed her mind and requested a hearing. The case was assigned to me January 26, 2011. The hearing took place February 23, 2011. The hearing transcript (Tr.) was received March 3, 2011.

At the close of evidence, I kept the record open until March 16, 2011, to allow Applicant to present documentary evidence in addition to Exhibits A and B. Her post-hearing documents are marked and admitted, without objections, as follows: (1) Exhibit C–2009 divorce decree; (2) Exhibit D–2009 performance report; (3) Exhibit E–2010 performance report; (4) Exhibit F–account activity report for judgment; and (5) Exhibit G–student loan payoff.

Findings of Fact

Applicant's responses to the SOR allegations were mixed with admissions and denials as well as explanations. Her admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 35-year-old employee of a federal contractor. She is seeking to obtain a security clearance for the first time. She has worked as a supply chain specialist for her current employer since January 2008. Before that, she worked from July 2006 to January 2008 as a subcontractor for her current employer. According to recent performance reports, she has a good employment record and is known as a valued team member. She is seeking to advance her career by obtaining a bachelor's degree in business administration. For this endeavor, her school expenses are reimbursed by her employer.

Applicant has a history of financial problems. Those difficulties resulted from a troubled marriage, which began in 1999. She described her marriage as an unhealthy, nonphysical, abusive relationship in which her husband controlled financial matters and

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 contained in Enclosure 2 to the Directive.

excluded her from all participation in and knowledge of their financial affairs. For example, he withheld a debit card from her and she did not have access to their bank account unless she walked into a branch office and made inquiry. She separated from her husband in 2008, and she obtained a divorce in 2009. The marriage produced no children. The divorce decree² addressed payment of debts by Applicant and her husband as follows:

- Applicant was ordered to pay all debts unknown to her husband;
- Each party was ordered to pay the debts each incurred since August 1, 2009, the date of their last separation;
- Each party was ordered to pay any unsecured debt incurred in their name alone;
- Each party was ordered to pay any debt incurred by them after August 1, 2009;
- Any debt incurred by either party before August 1, 2009, was ordered to be paid by the party who incurred the debt; and
- Each party was ordered to pay 100% of their student loans.

The divorce decree, as summarized above, did not address, by name, any of the debts in the SOR, which alleged five delinquent debts for a total of about \$22,776. Those five debts are addressed below.

The debt in SOR ¶ 1.a concerns an unpaid judgment for \$9,284. It stems from an automobile loan, a joint installment loan, obtained by Applicant and her husband in 2006.³ The vehicle was repossessed in 2007, when Applicant was out of work for about six months. She did not consider the loan her obligation because her husband bought the vehicle and put her on the financial paperwork. She was unaware of the judgment for a deficiency balance until she learned about it during the security clearance process. In 2010, she communicated with the law firm collecting the judgment and agreed to make payments via payroll deduction/garnishment. She has made payments of about \$324 per month (the amount varies based on her pay) since about August 2010; the outstanding balance in August 2010 was \$14,237, which included a large amount of interest; and the current balance as of March 2011 was \$7,823.⁴ The law firm has been unable to locate Applicant's ex-husband, so she alone is repaying the judgment.

The debt in SOR ¶ 1.b concerns a charged-off account for \$5,140. It stems from a credit card account with a major bank Applicant's husband opened before their marriage in 1999. Although her husband put her name on the account at some point, she denies responsibility for it because she never possessed a credit card for the account and did not have access to the account. The debt does appear on a January

² Exhibit C.

³ Exhibit 4 at 6.

⁴ Exhibits A and F.

2011 credit report with a balance of \$5,140.⁵ She did not present any paperwork specific to this debt.

The debt in SOR ¶ 1.c is a charged-off account for \$8,230. It stems from an automobile loan, a joint installment loan, opened in 2006.⁶ Applicant kept possession of the car after the divorce. The car experienced mechanical problems that she could not afford to repair. The vehicle was repossessed in about June 2009. She has not received correspondence or notice from the creditor that she owed a deficiency balance on the loan. The debt does appear on a January 2011 credit report with a balance of \$8,988.⁷ She did not present any paperwork specific to this debt, but she did present proof of payment on another automobile loan with the same creditor.⁸ This is the loan, cosigned by her mother, she used to buy her current vehicle to replace the vehicle repossessed in 2009. The paperwork works shows timely monthly payments from December 2009 through November 2010, and she testified the payments remain current.

The debts in SOR ¶¶ 1.d and 1.e are medical collection accounts for \$49 and \$73. Although account numbers are alleged, the creditors are not. Likewise, the identity and addresses of the creditors are not revealed in the credit reports.⁹ Applicant denies both knowledge and responsibility for these debts.

Applicant has taken other steps to rehabilitate her financial life. She has lived with her mother since 2008 and pays her about \$400 monthly. Besides cosigning for the car loan, her mother also made the \$3,000 down payment for the car, which Applicant has since repaid. Applicant's gross income from her job is about \$44,000; she contributes 8% into a 401(k) account; she has about \$650 in a savings account; and she manages her money by using online banking, reviewing her account on a day-to-day basis and planning accordingly.

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.

⁵ Exhibit 7 at 2.

⁶ Exhibit 4 at 5.

⁷ Exhibit 7 at 2.

⁸ Exhibit B.

⁹ Exhibits 4–7.

It is well-established law that no one has a right to a security clearance.¹⁰ 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.”¹¹ 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.¹² An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁴ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁷ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁸ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁹

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.

¹⁰ *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).

¹¹ 484 U.S. at 531.

¹² Directive, ¶ 3.2.

¹³ Directive, ¶ 3.2.

¹⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁵ Directive, Enclosure 3, ¶ E3.1.14.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ *Egan*, 484 U.S. at 531.

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

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.²⁰ 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,²¹ 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.²² The overall concern under Guideline F is:

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.²³

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.

The evidence here supports a conclusion that Applicant has a history of financial problems (i.e., delinquent debts). This history raises security concerns because it indicates inability or unwillingness to satisfy debts²⁴ and a history of not meeting financial obligations²⁵ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions.

With that said, I attach no security significance to the two medical collection accounts for \$49 and \$73. First, in general, unpaid medical debts rarely reflect poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, and they rarely reflect frivolous spending, overspending, or living beyond one's means. Instead, they reflect an expense, often unexpected, for necessary medical care or treatment.

²⁰ Executive Order 10865, § 7.

²¹ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²² 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).

²³ AG ¶ 18.

²⁴ AG ¶ 19(a).

²⁵ AG ¶ 19(c).

Second, the amounts involved here are small if not trivial. Third, in light of Applicant's denial, the evidence is not sufficient to establish that she is responsible for these two debts with unknown creditors. For all these reasons, the two medical collection accounts are decided for Applicant.

There are six mitigating conditions to consider under Guideline F.²⁶ Any of the following may mitigate security concerns:

¶ 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; or

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

Of those mitigating conditions, the most pertinent are ¶¶ 20(b), 20(d), and 20(e). Each is discussed below.

Mitigating condition ¶ 20(b) applies because Applicant's financial problems resulted from a troubled marriage in which her husband controlled all financial matters to her detriment. This situation, circumstance, or condition was largely beyond her control. She has acted responsibly under the circumstances by separating from and then divorcing her husband. She has since gone about the process of rebuilding her life, to include her financial life.

Mitigating condition ¶ 20(d) applies because Applicant has taken steps to repay debts and stabilize her financial situation. Besides paying all of her current expenses,

²⁶ AG ¶ 20 (a)–(f).

repaying her mother a \$3,000 loan for a car down payment, and paying on her current car loan, Applicant entered into an agreement to repay the judgment (SOR ¶ 1.a). She is repaying the judgment by payroll deduction/garnishment, which is an arrangement that is not unusual when a law firm is collecting on a judgment, as is the case here. She has made multiple payments, she is making good progress, and she will have the judgment repaid in the near future.

Mitigating condition ¶ 20(e) applies because Applicant has provided a reasonable basis to dispute the legitimacy of the delinquent debts in SOR ¶¶ 1.b and 1.c. The debt in SOR ¶ 1.b is the charged-off account stemming from a credit card account opened by her ex-husband before their marriage. She provided a credible explanation that she never had access to this account and therefore contends she is not responsible for the debt. Her position is supported by the terms of the divorce decree, as she did not incur any of the charges to the credit card account. She did not provide any documented proof specific to the debt, but that is somewhat understandable given her lack of account access.

The debt in SOR ¶ 1.c is the charged-off account stemming from a car loan for the vehicle Applicant kept after the divorce. The vehicle was voluntarily repossessed when Applicant decided she could not afford mechanical repairs. She never received notice of a deficiency balance from the creditor. Subsequently, she financed, with her mother as a cosigner, her current vehicle from the same creditor. She did not present any paperwork specific to the debt, but she presented paperwork for her current vehicle with the same creditor.²⁷ This ongoing debtor-creditor relationship suggests that the creditor is not pursuing a deficiency balance or that a deficiency balance does not exist.

To conclude, I have no current doubts about Applicant's judgment, reliability, and trustworthiness. Although Applicant did not present a perfect case in mitigation, she presented sufficient evidence, with her credible testimony and documentary evidence, that her financial problems were largely due to her troubled marriage as opposed to her financial irresponsibility or negligence. The evidence also shows that since leaving her husband, she has made progress in resolving financial problems from her past, she is living within her means, and she is working hard to improve her financial future. Accordingly, after giving due consideration to the whole-person concept,²⁸ I conclude that Applicant met her ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for Applicant.

²⁷ Exhibit B.

²⁸ AG ¶ 2(a)(1)–(9).

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a–1.e: 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