



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



In the matter of:)
)
-----) ISCR Case No. 10-00848
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

January 5, 2011

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 or difficulties, which are ongoing. Applicant failed to present sufficient evidence to overcome the security concerns raised by 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 September 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 timely answered the SOR. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

On or about October 26, 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 November 3, 2010. She then had a 30-day period to submit a response setting forth objections, rebuttal, extenuation, mitigation, or explanation. To date, she has not replied. The case was assigned to me on December 23, 2010.

Findings of Fact

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

Applicant is a 29-year-old employee of a federal contractor. She completed a security clearance application in July 2009.⁴ In the application, she reported working for the federal contractor since July 2008. Before that, she was unemployed from January 2007 to July 2008. She worked at a hospital during 2006–2007, and she worked in retail sales during 1999–2006.

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 documents, some of which are identified as exhibits in this decision.

⁴ Exhibit 4.

Applicant has never married. She has two minor children, born in 2001 and 2008, living in her household.

Applicant has a history of financial problems or difficulties that she does not dispute. She attributes the financial problems to separating from her then boyfriend in 2003 or 2004.⁵ She also points to delayed or irregular (or both) payments of child support, although it appears she has been receiving \$400 monthly in child support on a regular basis for some time.⁶

In her two-page reply to the SOR, Applicant admitted or accepted responsibility for all 22 delinquent debts ranging in amounts from \$22 to \$8,559 for a total of about \$14,397.⁷ The debts consist mainly of collection and charged-off accounts. Although admitting the debts, Applicant explained she was disputing four medical accounts in collection because she had full medical coverage when the debts were incurred. She did not present any documentary evidence supporting the disputes. Concerning the other delinquent debts, she explained her intentions as follows:

I am in the process of getting help from Consumer Credit Counseling of [XYZ] county. I am aware that my past financial history has not been the best, but I have not incurred any new debts that I have not been able to handle. I have reduced my cost of living by downsizing the cost of my dwelling from \$1,000.00 to \$675. With the saving from this recent downsize I m able to put together a plan with the help of CCCS of [XYZ] county to get these debts resolved in a timely manner.⁸

Applicant did not present any documentary evidence of her debt-management plan with Consumer Credit Counseling. Likewise, she did not present any documentary evidence of efforts to repay, settle, or otherwise resolve the delinquent debts in the SOR.

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.

⁶ Exhibit 6.

⁷ Answer to SOR.

⁸ Answer to SOR.

It is well-established law that no one has a right to a security clearance.⁹ 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.”¹⁰ 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.¹¹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹²

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹³ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁴ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁵ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁶ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁷ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁸

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 and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

⁹ *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).

¹⁰ 484 U.S. at 531.

¹¹ Directive, ¶ 3.2.

¹² Directive, ¶ 3.2.

¹³ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁴ Directive, Enclosure 3, ¶ E3.1.14.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ *Egan*, 484 U.S. at 531.

¹⁸ 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.¹⁹ 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,²⁰ 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.²¹ 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.²²

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 evidence here supports a conclusion that Applicant has a history of financial problems or difficulties, which are ongoing. This history raises security concerns because it indicates inability or unwillingness to satisfy debts²³ and a history of not meeting financial obligations²⁴ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions.

¹⁹ Executive Order 10865, § 7.

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

²¹ 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).

²² AG ¶ 18.

²³ AG ¶ 19(a).

²⁴ AG ¶ 19(c).

Under Guideline F, there are six conditions that may mitigate security concerns:²⁵

¶ 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; and

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

Of those mitigating conditions, the most pertinent here is ¶ 20(b). It is most probable that Applicant's financial problems were caused, in part, due to the separation from her boyfriend as well as the irregular child-support payments. Her period of unemployment in 2007–2008 was a probable factor too. This is difficult to measure, however, because the first two of the circumstances took place years ago, and Applicant did not present any documentary evidence tying the circumstances to the indebtedness. Nevertheless, some credit in mitigation is appropriate.

Applicant is required to act responsibly under the circumstances in order to receive full credit in mitigation under ¶ 20(b), and she has not met that requirement. A responsible applicant would have made the effort to present documentation in support of her case. Applicant did not present any documentation showing the current status of the debts in the SOR or of her efforts in working with Consumer Credit Counseling. Of the latter, she failed to present a realistic plan of action to resolve the indebtedness. 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. Based on this record, a favorable decision is not justified. At bottom, Applicant's ongoing financial problems raise doubts or questions about her judgment, reliability, and trustworthiness.

²⁵ AG ¶ 20 (a) – (f).

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 concept.²⁶ 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 H:	Against Applicant
Subparagraphs 1.a–1.v:	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

²⁶ AG ¶ 2(a)(1) – (9).