



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



In the matter of:)
)
-----) ISCR Case No. 11-00543
)
Applicant for Security Clearance)

Appearances

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

December 29, 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. Applicant presented sufficient evidence to mitigate and overcome the security concerns stemming from her problematic financial history. Accordingly, as discussed below, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on August 17, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) explaining it was unable to find that it was 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 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 September 30, 2011, Department Counsel submitted their 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 or about October 10, 2011. She then had a 30-day period to submit a response setting forth objections, rebuttal, extenuation, mitigation, or explanation. Applicant made a timely reply and those matters are collectively admitted as Exhibit A.⁴ The case was assigned to me December 12, 2011.

Findings of Fact

The SOR alleged eight delinquent accounts ranging in amounts from \$37 to \$7,746 for a total of about \$12,977. In Applicant's reply to the SOR (Answer), she admitted the debts except for a \$37 collection account and an \$876 collection account. Her admissions are accepted and adopted and incorporated herein as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 37-year-old employee of a federal contractor. She has worked as an administrative assistant since April 2010. Before that, she was laid off from a job in October 2008, and was then unemployed until April 2010.

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 here. 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 may be identified as exhibits in this decision.

⁴ Exhibit A consists of ten pages in total, the first page is a cover sheet and the remaining nine pages are referred to as Exhibit A-1, Exhibit A-2, etc. Note that Exhibit A-2 and A-8 are duplicates.

Applicant married in 1996; divorced in 2002; and she has lived with a man since 2001. She has three children, born in 1991, 1993, and 1998, all of whom live in her household. She has not received any child-support payments.⁵

The eight delinquent debts alleged in the SOR stem from seven unpaid collection accounts and an unpaid judgment. The following table summarizes both the debts and Applicant’s current efforts to resolve them.

<i>Debts</i>	<i>Status</i>
SOR ¶ 1.a–\$315 collection account.	Made offer to settle account via \$25 monthly payments; pending reply. (Exhibit A-2).
SOR ¶ 1.b–\$37 collection account.	Disputing debt under the Fair Credit Reporting Act (FCRA), which is a federal law codified at 15 U.S.C. § 681 et seq. (Exhibit A-3)
SOR ¶ 1.c–\$876 collection account.	Disputing debt under the FCRA. (Exhibit A-4)
SOR ¶ 1.d–\$74 collection account.	Made offer to settle account via \$37 monthly payments; pending reply. (Exhibit A-5)
SOR ¶ 1.e–\$166 collection account.	Made offer to settle account via \$30 monthly payments; pending reply. (Exhibit A-6)
SOR ¶ 1.f–\$7,746 collection account.	Made offer to settle account via \$50 monthly payments; pending reply. (Exhibit A-7)
SOR ¶ 1.g–\$709 judgment.	No documentary information provided; unresolved.
SOR ¶ 1.h–\$3,054 collection account.	Made offer to settle account via \$25 monthly payments; pending reply. (Exhibit A-9)

In response to the FORM, Applicant provided the following explanation for her problematic financial history:

[M]y mother was diagnosed with colon cancer stage 3B. She had surgery in October 2010 and 12 sessions of chemotherapy from that time to now.

⁵ Exhibit 6.

She was very sick and needed help physically, emotionally, and financially. My sister and I took turns taking care of her and her needs. In January of 2011, my youngest brother was diagnosed with stage 4 advanced testicular cancer that had spread to his stomach, liver, and lungs. He has been undergoing chemotherapy and isn't doing very well.

I have been preoccupied with the needs of my family that I have not had time to concentrate on repairing my credit to the fullest of my ability. However, I have been trying to catch up on all my household bills and rent. I was out of work for almost 2 years prior to getting this job. My biggest credit is [a credit union], which I do plan on paying off. I have been with [the credit union] for years and was always on time with payments on my loans. However, with my job loss it was tough. I was also hesitant to make payment arrangements with some of my creditors as my financial means were few and since I did not know where I stood with my current employment with [my employer], I did not want to make promises I couldn't keep if I lost my job. I have recently sent out letters to my creditors in regards to making payment arrangements with them. I have cleared 2 debts from my list back in September and plan on paying off the rest.

I know that my credit is a big part of keeping my employment and I am trying very hard to stay on task with it. I ask that you please take into consideration my family issues and grant me this clearance or an extension to try to get it done. It will take some time but once I get cleared then I will know I have a steady income and can start clearing up my debts.⁶

Law and Policies

It is well-established law that no one has a right to a security clearance.⁷ 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."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.

⁶ Exhibit A-1.

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).

⁸ 484 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.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 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.

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.¹⁷ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

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).

¹⁷ Executive Order 10865, § 7.

Discussion

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:

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, or negligent in handling and safeguarding classified information within the defense industry.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. The evidence raises security concerns because they indicate 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.

There are six mitigating conditions to consider under Guideline F.²³ Given the evidence here, I have especially considered the following mitigating conditions:

AG ¶ 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;

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

¹⁹ 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); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

²⁰ AG ¶ 18.

²¹ AG ¶ 19(a).

²² AG ¶ 19(c).

²³ AG ¶ 20(a)–(f).

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;²⁴ and

AG ¶ 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.

Applicant disputes two of the eight debts and provided sufficient documentation in support of her dispute. For the other six debts, she provided sufficient documentation to show that she has initiated a good-faith effort to repay five creditors via monthly payments. With that said, it is evident that her problematic financial history is due to circumstances largely beyond her control. For example, the divorce in 2002, the lack of child-support payments, her period of unemployment during 2008–2010 that preceded her current job, her mother’s serious illness, and her brother’s serious illness are all factors beyond her control. Taken together, they amount to a difficult situation for anyone. Although the cumulative effect of these circumstances is difficult to measure, it is certainly greater than the effect of any single circumstance. Moreover, she acted responsibly under the circumstances by looking for work, finding her current job, and undertaking efforts to address her indebtedness once she obtained a degree of stability. It appears, based on the written record, that she is doing the best she can under challenging circumstances. Given that her financial problems did not occur overnight, coupled with her available means, it will take time for her to address and resolve.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating the evidence in light of the whole-person concept,²⁵ I conclude Applicant has mitigated the financial considerations security concerns. In reaching this conclusion, I note that the purpose of a security clearance case is to evaluate an individual’s reliability, trustworthiness, judgment, and ability to safeguard classified information; it is not a debt-collection procedure. Accordingly, I conclude she has met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information. This case is decided for Applicant.

²⁴ ISCR Case No. 99-0201 (App. Bd. Oct. 12, 1999) (“[T]he concept of ‘good faith’ requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Such standards are consistent with the level of conduct that must be expected of persons granted a security clearance.”) (citations omitted); ISCR Case No. 02-30304 (App. Bd. Apr. 20, 2004) (relying on a legally available option, such as Chapter 7 bankruptcy, is not a good-faith effort) (citations omitted); ISCR Case No. 99-9020 (App. Bd. Jun. 4, 2001) (relying on the running of a statute of limitations to avoid paying a debt is not a good-faith effort).

²⁵ 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.h: 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