



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



In the matter of:)
)
-----) ISCR Case No. 11-07010
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

08/06/2012

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 Applicant has a history of financial problems. Applicant is making a good-faith effort to resolve the financial problems. Accordingly, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on or about April 9, 2012, the Defense Office of Hearings and Appeals (DOHA) sent Applicant 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 reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant timely answered the SOR and requested a hearing. The hearing took place July 10, 2012. The transcript (Tr.) was received July 25, 2012.

Findings of Fact

The SOR alleged 13 delinquent debts (collection accounts) in amounts ranging from \$46 to \$13,510 for a total of about \$34,799. Applicant admitted these allegations in her answer to the SOR, except for the debts in SOR ¶¶ 1.a and 1.h. Her admissions are accepted and adopted and incorporated as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 50-year-old employee of a federal contractor. She is seeking a security clearance for the first time for her job as a food-service worker at a U.S. Air Force base. She began this job in December 2010. Before that, she worked for many years in sales and administration in local offices of a company that provides supplemental insurance policies. Her husband has worked for the same insurance company for many years. Married since 1979, she and her husband have five children with birth years ranging from 1981 to 2002.

Applicant has a history of financial problems, which she does not dispute.² She attributes the financial problems to her husband's job several years ago, which also resulted in multiple relocations to pursue his job with the same insurance company.³ Indeed, Applicant's security clearance application shows residences in three different states since 2002, and it also shows four residential addresses within their current city and state since 2005. As a result, they fell behind on credit card accounts, which were in her name and which her husband used for business expenses.

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 See Government Exhibits (GE) 1–5.

³ See Tr. 29–32.

Their overall financial situation has improved, albeit slowly, since relocating to their current city and state. The progress has been slow due to the weak economy. But her husband recently moved from a district sales coordinator to a regional sales coordinator position. Her husband's income is irregular as the job involves sales, multiple subordinate agents, and a complicated commission structure. But within the next year or so, he has the potential to earn a six-figure gross income, perhaps as high as \$200,000.⁴ The gross is before the normal deductions plus deductions for business expenses for operating the office, which run about \$36,000 annually.⁵

Applicant has made good progress in addressing the delinquent debt, and she provided documentary evidence confirming her efforts.⁶ The debts and the current status of those debts are summarized in the following table.

<i>Debt</i>	<i>Current Status</i>
SOR ¶ 1.a—\$333 collection account.	Disputes as not her debt. (GE 4 at 1; Tr. 35–39)
SOR ¶ 1.b—\$1,047 collection account.	Making payments. (AE 3; Tr. 39–41)
SOR ¶ 1.c—\$8,954 collection account stemming from voluntary possession of car used by daughter.	Making payments. (AE 3; Tr. 42–43)
SOR ¶ 1.d—\$962 collection account.	Making payments. (AE 3; Tr. 43–45)
SOR ¶ 1.e—\$80 collection account.	Paid. (AE 3; Tr. 45)
SOR ¶ 1.f—\$94 medical collection account.	Paid. (AE 3; Tr. 45–46)
SOR ¶ 1.g—\$46 medical collection account.	Paid. (AE 3; Tr. 46–47)
SOR ¶ 1.h—\$332 collection account.	Duplicate debt with SOR ¶ 1.a.
SOR ¶ 1.i—\$13,510 collection account stemming from credit card used for business expenses.	Dispute validated account; making payments; intends to try to settle the account as current balance of \$14,725 consists of nearly 50% interest. (AE 1 and 3; Tr. 47–50)

⁴ Tr. 82–90.

⁵ Tr. 90.

⁶ Applicant Exhibits (AE) 1–4.

SOR ¶ 1.j—\$753 medical collection account.	Making payments. (AE 3; Tr. 50)
SOR ¶ 1.k—\$2,061 collection account.	Making payments. (AE 3; Tr. 50–51)
SOR ¶ 1.l—\$1,912 collection account.	Settled. (AE 3; Tr. 51–52)
SOR ¶ 1.m—\$4,715 collection account.	Making payments. (AE 3; Tr. 52)

Concerning the collection accounts with outstanding balances, Applicant’s plan is to enter into a debt-repayment plan that consolidates the debts and allows a single monthly payment. In addition to the debts in the SOR, Applicant paid a total of \$2,560 to resolve debts owed to six creditors.⁷

Applicant presented the testimony of two character witnesses. Both witnesses vouched for her reliability, trustworthiness, and good judgment. The first witness was an active duty military officer (a full-bird colonel), and the second was a regional sales coordinator from the same insurance company that employs her husband. Both gentlemen traveled a substantial distance at their own expense to appear as witnesses. In addition, she presented five letters from various individuals who support her application for a security clearance.⁸

Law and Policies

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

⁷ AE 4; Tr. 53–54.

⁸ AE 5.

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.

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.

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.

Discussion

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

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).

¹⁹ Executive Order 10865, § 7.

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

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, 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. Her unfavorable financial history 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, and the facts also suggest a degree of financial irresponsibility.

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

AG ¶ 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;

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;

²¹ 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).

²² AG ¶ 18.

²³ AG ¶ 19(a).

²⁴ AG ¶ 19(c).

AG ¶ 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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;²⁵

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; or

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

I have considered all the mitigating conditions and two are most pertinent. The first is AG ¶ 20(d), based on Applicant's documented initiation of a good-faith effort to repay the various collection accounts. Indeed, she has taken action on every debt that she believes is valid, she has paid or settled four debts, and she is making payments on the others, which she intends to address in the future through a debt-repayment plan with a single monthly payment. She also resolved debts owed to six other creditors not alleged in the SOR. The second is AG ¶ 20(e), based on the debt she is disputing as invalid.

Although Applicant has additional work to do, I am persuaded—based on the actions taken to date and the favorable endorsements from the two character witnesses—that Applicant has clearly and convincingly committed to resolving the outstanding collection accounts. That outcome is made more probable based on the expected increase in her husband's income due to the recent job promotion. I am also persuaded that she is a good candidate for a security clearance to work in the defense industry.

Following *Egan* and the clearly-consistent standard, I have no doubts or concerns about Applicant's fitness or suitability for a security clearance to work in the defense industry. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.²⁶ Having done so, I

²⁵ 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).

²⁶ AG ¶ 2(a)(1)–(9).

conclude that Applicant met her ultimate burden of persuasion to obtain a favorable clearance decision.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.m:	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