



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



In the matter of: )  
 )  
----- ) ISCR Case No. 11-12534  
 )  
Applicant for Security Clearance )

**Appearances**

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

10/25/2013

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke her eligibility for a security clearance to work in the defense industry. Her recent history of security infractions or violations coupled with a history of financial problems equate to a pattern of irresponsible, lax, or negligent conduct. She did not present sufficient evidence to explain, extenuate, and mitigate the security concerns. Accordingly, this case is decided against Applicant.

**Statement of the Case**

On April 12, 2013, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the

national interest to grant or continue access to classified information.<sup>1</sup> The SOR is similar to a complaint, and it detailed the reasons for the action under the security guidelines known as Guideline K for handling protected information, Guideline M for misuse of information technology systems, Guideline E for personal conduct, and Guideline F for financial considerations.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on July 3, 2013. The hearing took place by video teleconference as scheduled on August 7, 2013. The transcript was received on August 15, 2013.

The record was kept open until August 20, 2013, to allow Applicant to submit documentary matters. Those matters were timely received and they are admitted without objections as Exhibits A and B.

### **Findings of Fact**

Applicant is a 35-year-old employee of a federal contractor, and she is seeking to retain a security clearance. With a background in software engineering, she has worked for the same company, a major defense contractor, since mid-2000. She worked as a software engineer programmer for several years before moving into the field of software-configuration management. Her educational background includes a bachelor's degree in computer engineer technology and a master's degree in technology management.

Married in 2003, Applicant and her husband had twin sons in 2006. Her husband's residential landscaping business failed in about 2010. He now works as an administrator at the church they attend. His annual income, which includes military retired pay, is about \$30,000 to \$35,000. She earns an annual salary of about \$78,000. They have no other sources of income. She stated that she has a 401(k) account with a balance of about \$136,000 (with a loan against the account), an IRA account with about \$6,000, no savings account, and a checking account with a minimal balance as of the day of the hearing.

There is substantial evidence establishing that Applicant has a history of financial problems or difficulties.<sup>2</sup> The five delinquent accounts in the SOR fall into two

---

<sup>1</sup> 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 Department of Defense 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.

<sup>2</sup> Exhibits 2,3, 8, 9, and 10.

categories: (1) three collection accounts totaling \$318; and (2) two delinquent loans stemming from a home that was foreclosed upon.<sup>3</sup>

The foreclosure on Applicant's home occurred in late 2011. She reported the incident to her company's security office in May 2012 as follows:

In November 2011 my husband and I had a foreclosure on our home, [street address]. For at least two years, my husband and I attempted to work with [a large national bank] to do a loan modification. We were \$150,000 in the rear on our [loan], and we could not keep up with the payments along with child care and other housing expenses. After several efforts to do a modification, we attempted a short sale, but once again we were denied. After much thought, we decided to walk away from [the] house, we couldn't get any form of credit not even store credit. Since then we have moved into a rental home, we are slowly getting back up on our financial feet.<sup>4</sup>

The two loans associated with the home were both obtained or opened in April 2006.<sup>5</sup> The mortgage loan had a high credit of \$272,469, and the home equity line of credit (HELOC) had a high credit of \$68,118. A July 2011 credit report shows that both loans were late over 120 days; the mortgage loan was \$11,417 past due; and the HELOC was \$8,690 past due. Both loans continued to deteriorate. A December 2012 credit report<sup>6</sup> shows that the mortgage loan was a foreclosure with a \$0 balance, and the HELOC was a charged-off account<sup>7</sup> with a balance of \$72,922. And a June 2013 credit report<sup>8</sup> shows the same information for both loans.

Applicant has had no communication with the lender since walking away from the property. She was unaware of the status of either loan and presented no documentary information on either. She made no effort to resolve the HELOC, choosing instead to address medical bills and current debts.<sup>9</sup> Whether she is still liable or responsible for the

---

<sup>3</sup> The three collection accounts (for \$106, \$180, and \$32) are so minor that, when viewed individually or in combination with the evidence as a whole, they do not raise a security concern. Accordingly, those matters will not be discussed further.

<sup>4</sup> Exhibit 4.

<sup>5</sup> Exhibit 10 at 5.

<sup>6</sup> Exhibit 9.

<sup>7</sup> A charge off is a declaration by a creditor to treat an account receivable as a loss, expense, or bad debt because payment is unlikely. But doing so does not free the debtor of having to pay the debt. A charge off is one of the most adverse factors that can be listed on a credit report.

<sup>8</sup> Exhibit 8.

<sup>9</sup> Tr. 78.

either loan is a difficult question and is governed by state law. The only way to know for certain that a debt has been forgiven is if a debtor is issued a Form 1099-C, Cancellation of Debt,<sup>10</sup> or receives a letter or other document from a creditor stating that the account has been resolved in their favor. There is no documentary information showing that either has occurred here.

In addition to her financial difficulties, there is substantial evidence establishing Applicant has a history of security infractions or violations while working for her current employer.<sup>11</sup> There are five incidents that occurred between 2009–2012 that form the basis for the SOR allegations under Guideline K. Most recent, she was found culpable for three security incidents during a 12-month period as follows: (1) in January 2012, she inadvertently placed a classified document in the wrong container and received a written warning; (2) in early December 2012, she was found responsible for sending a password for a classified server via unclassified means; and (3) in later December 2012, she was found culpable for leaving a security container unsecured. As a result of the two December incidents, she received a written reprimand and was suspended from work for five days without pay.<sup>12</sup> None of the five incidents resulted in the actual or probable compromise of classified information. Applicant admits the incidents were careless mistakes that she regrets.<sup>13</sup> Since returning from the five-day suspension, she received additional security training and she was moved to another program where she does not work with classified information.<sup>14</sup>

Applicant presented character evidence in the form of two letters of recommendation from coworkers who were also former managers or supervisors.<sup>15</sup> Both letters are highly favorable.

---

<sup>10</sup> It's possible that a Form 1099-C would not be issued for a mortgage loan default due to *The Mortgage Forgiveness Debt Relief Act of 2007*. In general, the Act provides tax relief for cancelled or forgiven mortgage debt, between 2007 and 2012, that was used to buy, build, or substantially improve a principal residence, or to refinance debt incurred for those purposes, and the debt must have been secured by the home. Whether the Act applies to Applicant's situation is a question beyond the scope of this proceeding, and it is not decided herein.

<sup>11</sup> Exhibits 2–6.

<sup>12</sup> Exhibit 6.

<sup>13</sup> Tr. 104.

<sup>14</sup> Tr. 100–101.

<sup>15</sup> Exhibits A and B.

## Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>16</sup> 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.”<sup>17</sup> 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.<sup>18</sup> An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>19</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>20</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>21</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>22</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>23</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>24</sup> The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.<sup>25</sup>

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

---

<sup>16</sup> *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 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>17</sup> 484 U.S. at 531.

<sup>18</sup> Directive, ¶ 3.2.

<sup>19</sup> Directive, ¶ 3.2.

<sup>20</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>21</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>22</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>23</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>24</sup> *Egan*, 484 U.S. at 531.

<sup>25</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.<sup>26</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

### Discussion

In analyzing this case, I considered the evidence as a whole under Guideline F for financial considerations<sup>27</sup> and Guideline K for handling protected information.<sup>28</sup> That evidence shows a history of financial problems coupled with a history of security infractions or violations. Taken together, those facts and circumstances equate to a pattern of irresponsible, lax, or negligent conduct.<sup>29</sup> Such a pattern is wholly inconsistent with being a suitable candidate for a security clearance. Although I am persuaded that Applicant is a good, decent, and hard-working person, the financial problems and the recent series of lapses in her security responsibilities undermine her security suitability.

I reviewed and considered the mitigating conditions under the guidelines in light of the evidence, and none, individually or in combination, is sufficient to explain, extenuate, and mitigate the security concerns. In particular, she did not meet her "very heavy burden" to demonstrate mitigation in a case involving security violations under Guideline K.<sup>30</sup> Applicant did not present sufficient evidence of reform and rehabilitation to demonstrate that her history of financial problems and security violations are safely in the past. In addition, the SOR allegations under Guideline E for personal conduct and Guideline M for information technology, which consist of cross-allegations to matters under Guideline K, are decided against Applicant under the same rationale.

In deciding this case, I have weighed and evaluated the evidence in light of the whole-person concept.<sup>31</sup> In doing so, I gave Applicant credit for her favorable character evidence, but it is not sufficient to justify a favorable decision for Applicant.

---

<sup>26</sup> Executive Order 10865, § 7.

<sup>27</sup> AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>28</sup> AG ¶¶ 33, 34, and 35 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>29</sup> See AG ¶¶ 19(a), 19(c), 34(c), 34(g), and 34(h).

<sup>30</sup> ISCR Case No. 04-12742 at 4 (App. Bd. Feb. 25, 2011) (citation omitted).

<sup>31</sup> AG ¶ 2(a)(1)–(9).

## **Formal Findings**

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline K:	Against Applicant
Subparagraphs 1.a–1.e:	Against Applicant
Paragraph 2, Guideline M:	Against Applicant
Subparagraphs 2.a–2.b:	Against Applicant
Paragraph 3, Guideline E:	Against Applicant
Subparagraph 3.a:	Against Applicant
Paragraph 4, Guideline F:	Against Applicant
Subparagraphs 4.a & 4.c:	Against Applicant
Subparagraphs 4.b, 4.d, & 4.e:	For 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