



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



In the matter of:)	
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)	ISCR Case No. 11-14520
Applicant for Security Clearance)	

Appearances

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

07/30/2013

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. There is substantial evidence establishing a history of financial problems or difficulties, which is likely to recur or continue. She did not present sufficient evidence to mitigate the financial considerations security concern. Accordingly, this case is decided against Applicant.

Statement of the Case

On February 4, 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.¹ 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 answered the SOR on March 6, 2013. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

On or about May 22, 2013, Department Counsel submitted 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, who received it June 10, 2013. In reply, She submitted a two-page memorandum (Exhibit A) within the 30-day period allowed under the Directive. The case was assigned to me July 17, 2013.

Findings of Fact

Applicant admitted the five factual allegations in her answer to the SOR. 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 53-year-old employee of a federal contractor. She is seeking to obtain a security clearance for her job as an administrative analyst for a university research foundation. Her educational background includes a bachelor's degree awarded in 2004 and a master's degree awarded in 2008. She married in 1985, divorced in 1997, and she is the mother of two adult daughters. She is also a grandmother to six grandchildren. Her recent employment history includes working as an account associate for a large technology company from 1989 to 2010, when she was laid off due to loss of an account. She was then unemployed from January 2010 to October 2010, when she began her current job.

Applicant completed a security clearance application in May 2011.⁴ In doing so, she disclosed eight delinquent or collection accounts in response to a question seeking information about her financial record. There is substantial evidence establishing a

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 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.

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 evidentiary exhibits in this decision.

⁴ Exhibit 5.

history of financial problems or difficulties.⁵ Those matters are alleged in the SOR, admitted by Applicant, and are discussed below.

According to Applicant, she has “had financial issues all [her] life.”⁶ Those issues date back to at least July 2002 when she filed an individual petition seeking relief under Chapter 7 of the bankruptcy code.⁷ (SOR ¶ 1.e) She obtained a discharge later that same year. The other four matters were incurred after the Chapter 7 case. (SOR ¶¶ 1.a–1.d) They concern the following: (1) a \$4,370 collection account stemming from cosigning an apartment lease for her daughter who broke the lease after four months; (2) a \$21,865 charged-off account stemming from cosigning an auto loan for her daughter that resulted in default followed by repossession; (3) a mortgage loan on a condominium that she bought with a then partner that ended in foreclosure in 2008; and (4) a \$66,894 charged-off account for a second mortgage loan for the condominium. She has not provided reliable documentary evidence that she has paid, settled, entered into repayment agreements, disputed, or otherwise resolved the matters in the SOR.

In her background investigation, Applicant stated that her financial issues, in general, were related to continuing treatment for breast cancer during 2002–2003 as well as providing financial assistance to a daughter.⁸ She also stated that her current financial situation was stable. In her reply to the FORM, she stated that she made financial decisions during the last 12 years without the benefit of expertise or advice. She also stated that she paid \$2,500 to a credit repair firm to assist her, which resulted in settling two of the three debts she turned over to the firm; she also settled a debt on her own. She further stated that she did not understand the possible tax consequences of settling debts and withdrawing money from a retirement account, which resulted in small tax debts owed to state and federal tax authorities. Lastly, she explained that she had been told to seek assistance from her company’s employee assistance program (EAP), and she intended to contact the EAP after paying off her outstanding tax debts.

Applicant’s personal financial statement shows a net remainder of \$271 monthly without any payments toward the SOR debts.⁹ It also shows assets of about \$75,000 consisting of a 403(b) account, a 401(k)account , and a money market fund account.

⁵ Exhibits 4-10.

⁶ Exhibit A.

⁷ Exhibit 10.

⁸ Exhibit 6.

⁹ Exhibit 7.

Law and Policies

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

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).

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.²⁰ 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,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 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, or negligent in handling and safeguarding classified information within the defense industry.

Applicant's unfavorable financial history indicates inability or unwillingness to satisfy debts²⁴ and a history of not meeting financial obligations.²⁵ The facts are more than sufficient to establish these disqualifying conditions.

²⁰ Executive Order 10865, § 7.

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

²² 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).

²³ AG ¶ 18.

²⁴ AG ¶ 19(a).

²⁵ AG ¶ 19(c).

There are six mitigating conditions under Guideline F.²⁶ Based on the available evidence, none of the mitigating conditions are sufficient to fully mitigate the security concern. Applicant has a longstanding history of financial problems or difficulties that dates back to at least the 2002 Chapter 7 bankruptcy case, and it seems unlikely that history will change any time soon. Her plan is to seek assistance once she has paid off her outstanding tax debts. At this point, it is simply too soon to tell if she will follow through with this plan. Given her history, it is just as likely that her financial problems or difficulties will continue or recur.²⁷

Of course, a security clearance case is not aimed at collecting debts or enforcing tax laws.²⁸ Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the security guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.²⁹

Based on the available evidence, I am not persuaded that Applicant has taken enough significant actions to mitigate the security concern under Guideline F.

Applicant's longstanding history of financial problems raises doubt about her judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent standard, I resolve the doubt in favor of protecting national security. 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

²⁶ AG ¶¶ 20(a)–(f).

²⁷ AG ¶ 2(a)(9) (whole-person factor “the likelihood of continuation or recurrence”).

²⁸ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

²⁹ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

whole-person concept.³⁰ Having done so, I conclude that Applicant did not meet 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:	Against Applicant
Subparagraphs 1.a–1.e:	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

³⁰ AG ¶ 2(a)(1)–(9).