



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



In the matter of:)
)
-----) ISCR Case No. 12-07229
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

10/27/2016

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke her eligibility for access to classified information. She did not present sufficient documentary evidence to mitigate the concern stemming from a history of financial problems or difficulties, including a failure to file federal and state individual income tax returns on a timely basis for recent tax years. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on March 20, 2012.¹ More than three years later on August 27, 2015, after reviewing the application and information gathered during a background

¹ Exhibit 2 (this document is commonly known as a security clearance application).

investigation, the Department of Defense (DOD)² sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant her eligibility for access to classified information.³ The SOR is similar to a complaint. It detailed the reasons for the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR with a two-page memorandum on October 23, 2015.

Neither Applicant nor Department Counsel requested a hearing, and so the case will be decided on the written record.⁴ On January 14, 2016, Department Counsel submitted all relevant and material information that could be adduced at a hearing.⁵ The file of relevant material (FORM) was mailed to Applicant, who received it on January 27, 2016. She did not reply within the 30-day period from receipt of the FORM. The case was assigned to me on August 8, 2016.

Procedural Matters

Applicant submitted a number of documents along with her answer to the SOR. For clarity of the written record, those documents are marked and admitted as evidentiary exhibits as follows: (1) Exhibit A—IRS income tax records (13 pages); (2) Exhibit B—documentation concerning a work-related injury (3 pages); (3) Exhibit C—wage garnishment paperwork for student loans (7 pages); and (4) Exhibit D—wage garnishment paperwork for a debt owed to a federal agency (10 pages).

Findings of Fact

Applicant is a 51-year-old employee who requires a security clearance for her job with a company working in the defense industry. She has worked as a federal contractor for various companies since at least 1999.⁶ She married in 1993 and divorced in 2009. She has three children, born in 1982, 1985, and 1999. She has lived

² The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

³ 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.

⁴ Directive, Enclosure 3, ¶ E3.1.7.

⁵ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which are identified as evidentiary exhibits in this decision.

⁶ Exhibit 2.

at the same residence since 2006. Her educational background includes a bachelor's degree awarded in 2010.

Under Guideline F, the SOR alleges 11 financial matters that can be grouped as follows: (1) SOR ¶¶ 1.a, 1.b, and 1.h—three delinquent consumer accounts for a total of about \$16,921; (2) SOR ¶¶ 1.c, 1.d, 1.e, and 1.f—four delinquent federal student loan accounts for a total of about \$32,505; (3) SOR ¶ 1.g—a medical collection account for \$532; (4) SOR ¶ 1.i—a \$3,298 delinquent debt owed to a federal agency; and (5) SOR ¶¶ 1.m and 1.n—failure to file federal and state individual income tax returns on a timely basis for tax years 2009–2013.

In her answer to the SOR, Applicant indirectly admitted the SOR allegations and provided explanations for her situation. She explained that (1) her separation and divorce affected her financial situation and decisions; (2) obtaining a mortgage loan and adjusting to being a single parent and helping her adult children affected her financial situation; (3) she assured that she would not engage in unlawful, untrustworthy, or unreliable conduct; and (4) she was attempting to obtain a modification of her mortgage loan to assist her in resolving the delinquent financial accounts.

The three delinquent consumer accounts for a total of about \$16,921 are unresolved. Applicant did not submit documentation showing that the accounts were paid, settled, in a payment plan, cancelled, forgiven, or otherwise resolved.

The four delinquent federal student loan accounts for a total of about \$32,505 are unresolved. Applicant submitted paperwork showing that a garnishment order was implemented in about September 2015 for a total amount due of \$41,146.⁷ She did not, however, submit documentation showing a record of payment since September 2015.

The medical collection account for \$532 is unresolved. Applicant submitted paperwork showing that it stems from a denial of a workers' compensation claim for a work-related injury.⁸

The \$3,298 delinquent debt owed to a federal agency is unresolved. Applicant submitted paperwork showing that a garnishment order was implemented in about October 2015 for a total amount due of \$5,365.⁹ She did not, however, submit documentation showing a record of payment since October 2015.

The failure to file federal and state individual income tax returns on a timely basis for tax years 2009–2013 is largely unresolved. In Applicant's 2012 security clearance application, she explained that she failed to file federal and state income tax returns due

⁷ Exhibit C.

⁸ Exhibit B.

⁹ Exhibit A.

to procrastination.¹⁰ She submitted documentation, IRS tax records, showing that she has made some progress.¹¹ The IRS tax records show the following: (1) she filed her 2008 federal return on time, and the account balance is \$0; (2) she filed her 2010 federal return late on May 14, 2012, and the account balance is \$1,910; (3) she filed her 2011 federal return late on May 7, 2012, and received a refund of \$1,985; and (4) as of March 26, 2014, she had not filed her 2012 federal return. In addition, the same IRS tax records show that Applicant had adjusted gross income of \$72,562 in 2008, \$85,430 in 2010, and \$85,745 in 2011. She did not submit documentation concerning her state income tax returns for 2009–2013.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹² 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.”¹³ 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.¹⁴ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

¹⁰ Exhibit 2.

¹¹ Exhibit A.

¹² *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).

¹³ 484 U.S. at 531.

¹⁴ Directive, ¶ 3.2.

¹⁵ Directive, ¶ 3.2.

¹⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁷ Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.¹⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁰ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²¹

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.²² 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,²³ 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.²⁴ 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

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ *Egan*, 484 U.S. at 531.

²¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²² Executive Order 10865, § 7.

²³ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²⁴ 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).

questions about an individual's reliability, trustworthiness, and ability to protect classified information.²⁵

The concern is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

In analyzing this case, I considered the following disqualifying and mitigating conditions under Guideline F:²⁶

AG ¶ 19(a) inability or unwillingness to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

AG ¶ 19(g) failure to file annual federal, state, or local income tax returns as required or the fraudulent filing of the same;

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 [person] acted responsibly under the circumstances;

AG ¶ 20(c) [t]here are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The evidence here supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. With that said, I am not concerned about the \$532 medical collection account stemming from a work-related injury. The debt was incurred for necessary medical care or treatment, and it is not indicative of frivolous or irresponsible spending. SOR ¶ 1.g is decided for Applicant.

Nevertheless, I have concerns about Applicant's problematic financial situation, as it is largely unresolved and ongoing. She has apparently done little if anything to address the delinquent consumer debts. The student loans and the other federal debt are subject to garnishment orders, which belies a good-faith effort to repay. I am particularly concerned about her federal and state tax problems. Although she filed the delinquent federal returns for 2010 and 2011, the delinquent federal returns for 2009,

²⁵ AG ¶ 18.

²⁶ AG ¶ 20(a)–(f).

2012, and 2013 are outstanding. The same is true for the state returns for 2009–2013. It is also unknown how much, if any, Applicant owes in federal and state back taxes for the tax years in question. Her tax problems require close examination. Indeed, failure to file tax returns on a timely basis suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information.

I have considered the various circumstances that played a part in Applicant's financial problems, such as her separation and divorce, which occurred several years ago. I considered her efforts to fix her tax problems. I also considered her motivation, and I have no concerns that she is a tax protestor, is tax defiant, or is otherwise opposed to meeting her tax obligations. I assess the overall situation as one in which Applicant exercised exceptionally poor judgment for a number of years due to willful neglect or procrastination or both. The result was a situation that snowballed over the years to become a major problem, which is still unresolved. To sum up, Applicant's tax problems are too much, went on too long, and are too recent to justify a favorable decision.

Applicant's ongoing financial problems create doubt about her current reliability, trustworthiness, good judgment, and ability to protect classified information. 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.²⁷ Accordingly, I conclude that she did not meet 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.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h–1.n:	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 access to classified information.

Michael H. Leonard
Administrative Judge

²⁷ AG ¶ 2(a)(1)–(9).