



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-08543

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

01/30/2017

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke her eligibility for access to classified information. She presented sufficient evidence to explain, extenuate, and mitigate the security concern stemming from her problematic financial history. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on February 10, 2011. This document is commonly known as a security clearance application. Thereafter, on December 18, 2015, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, 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.¹ The SOR is similar to a complaint. It detailed the factual reasons for the

¹ This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG),

action under the security guideline known as Guideline F for financial considerations. She answered the SOR with a two-page memorandum on January 22, 2016. She admitted the five factual allegations with a clarification concerning the delinquent debt in SOR ¶ 1.e, and she requested a hearing.

The case was assigned to another administrative judge on May 5, 2016, and then reassigned to me on June 17, 2016. The hearing was held as scheduled on September 7, 2016. Department Counsel offered Exhibits 1-7, and they were admitted. Applicant testified on her own behalf and offered Exhibits A-M, and they were admitted. The transcript of hearing (Tr.) was received on September 15, 2016.

Findings of Fact

Applicant is a 62-year-old employee who requires a security clearance for her job as a senior technical support specialist (database management) with a company doing business in the defense industry. She has worked for this company since 1987. She has held a security clearance since 1992.² She has a good if not excellent record of employment.³ She had about \$69,000 in taxable earnings in 2015.⁴ Her educational background includes a bachelor's degree. She obtained the degree in 2016 at her employer's expense to improve her prospects with the company.⁵ Her first marriage ended in a divorce, and she married for a second time in 1988. She has an adult child from her second marriage as well as two adult stepchildren.

Under Guideline F for financial considerations, the SOR alleged a history of financial problems or difficulties consisting of five collection or charged-off accounts for a total of about \$65,610. Applicant does not dispute her problematic financial history. Indeed, in February 2012 she disclosed to her company's facility security officer (FSO) that she had about \$40,000 in delinquent debt.⁶ In turn, the FSO reported that adverse information to the Defense Department. Applicant provided additional information about her financial situation during a 2012 background investigation and in response to written interrogatories in 2014.⁷

The status of the five delinquent accounts in the SOR is as follows. The \$18,757 charged-off account in SOR ¶ 1.a was cancelled by the creditor in tax year 2015 in the

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).

² Exhibit 2.

³ Exhibit M.

⁴ Exhibit K.

⁵ Tr. 67-69.

⁶ Exhibit 3.

⁷ Exhibit 2.

amount of \$17,840.⁸ Applicant addressed it when she filed her 2015 tax returns.⁹ The \$16,531 collection account in SOR ¶ 1.e has been in a repayment arrangement (\$100 monthly) with a collection agency for some time.¹⁰ The balance was reduced to \$12,190 as of August 2016. The remaining three charged-off accounts are unresolved.

In addition to the delinquent debts in the SOR, Applicant has taken action to address other financial accounts. First, Applicant and her husband are current with their mortgage loan, which had a principal balance of about \$17,000 as of August 2016.¹¹ She anticipates paying off the mortgage loan within the next two years (June 2018).¹² Second, she has been in a repayment arrangement (\$300 monthly) for a closed credit card account with her credit union for some time.¹³ The balance was about \$2,700 as of August 2016, and she anticipates paying it off in about ten months. Third, she settled two other credit-card accounts with the same credit-card company for a total of about \$12,702 during 2012-2014.¹⁴ The outstanding debts were settled for \$4,302 and \$8,400, and required Applicant to make \$717 and \$700 monthly payments.

Applicant attributes her problematic financial history to a loss of income due to a serious injury suffered by her husband and an unsuitable investment.¹⁵ Her husband suffered traumatic brain injury in a 1997 car accident. As a result, he has problems with his memory and concentration. His income in 1996, the year before the car accident, was nearly \$54,000. His income in 1998, the year after the car accident, was about \$28,000. His income remained about the same in 1999, and it increased by about \$3,000 to \$31,823 in 2000. It fell to \$14,952 in 2001 and \$16,459 in 2002. It increased to \$48,522 in 2004 and \$45,364 in 2005, but then declined as it became more difficult for him to work. In 2006, his income was \$22,274; in 2007 it was \$7,292; in 2008 it was \$4,975; in 2009 it was \$5,187; in 2010 and 2011 it was \$0; and it was \$7,076 in 2012, which is the last year he was able to work. He now receives a Social Security payment of \$1,495 monthly as well as a worker's compensation payment of \$375 monthly.¹⁶

As a result of the 1997 car accident, Applicant and her husband received a \$300,000 settlement for the personal injuries her husband suffered. They received the

⁸ Exhibit E.

⁹ Tr. 62-63.

¹⁰ Tr. 41-43; Exhibits A and B.

¹¹ Exhibit C.

¹² Tr. 43-44.

¹³ Tr. 44-45; Exhibit D.

¹⁴ Tr. 77-78; Exhibit 2 at 17-25.

¹⁵ Exhibits F-L.

¹⁶ Tr. 65-66.

settlement proceeds in 2001; they used about \$50,000 to pay off bills and make some improvements to their home; and they used the remaining \$250,000 to generate income from interest-bearing accounts with credit unions. For example, in 2002, they received about \$16,798 in interest income, and in 2003 they received \$10,417.¹⁷ By 2008, which is the same time her husband's annual income was reduced to less than \$10,000, interest rates had fallen to the point where the credit-union accounts did not produce sufficient income. After consulting with both an attorney and a CPA, Applicant and her husband invested about \$200,000 in a partnership involving a non-traded real estate investment trust (REIT).¹⁸

Initially in 2008, the REIT paid Applicant and her husband a sizeable monthly income (more than \$1,000 monthly), but the income fell due to the 2008-2009 financial crisis and the decline in the real-estate market.¹⁹ In 2009, the REIT had a loss of income; in 2010, it paid less than \$3,000 in income; in 2011, it paid less than \$1,000 in income; in 2012, it had a loss of income; in 2013, it had a loss of income; in 2014, it paid less than \$3,000 in income; and in 2015, it had a loss of income. By 2011, Applicant and her husband were so dissatisfied with their investment that they consulted an attorney who advised them not to seek relief in bankruptcy because their investment in the REIT would be considered an asset subject to liquidation to pay off creditors. At this point, Applicant and her husband are resigned to holding the REIT investment in the hope that it will eventually recover.²⁰

Applicant's intention is to remain employed until at least age 66. She described her current financial situation as stable but without much of a financial cushion.²¹ In her words, she and her husband are "basically just living paycheck to paycheck and making it work the best that we know how."²² Concerning the three unresolved charged-off accounts, her plan is to use money from an ongoing payment arrangement (\$300 monthly), which will be available in about ten months, as well as the money from the mortgage loan payment, which will be available in about two years.²³

¹⁷ Exhibit J.

¹⁸ REITs pool the capital of numerous investors to purchase a portfolio of properties—office buildings, medical buildings, apartments, etc.—that the typical investor might not otherwise be able to purchase individually. The suitability of an investment in a non-traded REIT is questionable. The Financial Industry Regulatory Authority (FINRA) issued investor's alerts on non-traded REITs in October 2011 and November 2016, copies of which are available by searching (using the term non-traded REIT) FINRA's website at www.finra.org. According to Ric Edelman, who was named three times by *Barron's* the #1 independent financial advisor, non-traded REITs should be avoided because they are often investment scams. *Why You Should Avoid Buying Non-Traded REITs* at <http://www.edelmanfinancial.com/education-center/articles/w/why-you-should-avoid-buying-nontraded-reits>.

¹⁹ Exhibits F, G, H, and I.

²⁰ Tr. 78-79.

²¹ Tr. 73.

²² Tr. 71.

²³ Tr. 70.

Applicant made a favorable impression on me during the hearing. She was sincere, respectful, and polite. Overall, I found her credible.

Law and Policies

It is well-established law that no one has a right to a security clearance.²⁴ As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁵ 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.²⁶ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁷

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁸ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³⁰ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³¹

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.³² The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.³³

²⁴ *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 (no right to a security clearance).

²⁵ 484 U.S. at 531.

²⁶ Directive, ¶ 3.2.

²⁷ Directive, ¶ 3.2.

²⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁹ Directive, Enclosure 3, ¶ E3.1.14.

³⁰ Directive, Enclosure 3, ¶ E3.1.15.

³¹ Directive, Enclosure 3, ¶ E3.1.15.

³² *Egan*, 484 U.S. at 531.

³³ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

Discussion

Under Guideline F for financial considerations,³⁴ 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. 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 a [person's] reliability, trustworthiness, and ability to protect classified information.³⁵

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 the facts of this case, I considered the following disqualifying and mitigating conditions or factors as most pertinent:

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

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

AG ¶ 20(b) the conditions that resulted in the financial problems 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; and

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

The evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. Her financial problems appear to be the result of an over reliance on credit as well as the loss of income due to her husband's head injury and an unsuitable investment. These circumstances resulted in a reduction in household income and affected the ability of Applicant and her husband to meet their financial obligations. She has addressed two of the five delinquent debts in the SOR, with the cancellation of one debt while another debt has been in a payment arrangement for some time. In addition, she settled two other credit-card accounts and a third has been in a payment arrangement for some time. She has a

³⁴ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

³⁵ AG ¶ 18.

reasonable long-term plan to address the three remaining charged-off accounts, but doing so will take time as she does not have the financial means to do so now.

Considering the totality of circumstances, I am persuaded that Applicant's financial problems are due to circumstances largely beyond her control, and she has acted responsibly under difficult and trying circumstances. I am further persuaded that her financial problems are not due to irresponsibility, lack of concern, or negligence. My overall impression of Applicant is that she is a hard-working, responsible employee who found herself in a wholly unexpected and difficult situation. Finally, I am persuaded that Applicant will continue to adhere to her payment arrangements with creditors, and that she will, in due course, address the three remaining charged-off accounts.

In addition, Applicant receives credit in mitigation because she voluntarily reported the information about her financial problems to her company's FSO in 2012, and she has been truthful and complete in responding to questions about her financial problems. Her willingness to self-report speaks highly for her integrity, her willingness to comply with laws, rules, and regulations, and her overall suitability for access to classified information.

Applicant's history of financial problems no longer creates doubt about her 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*. Accordingly, I conclude that she 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.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	For Applicant
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Subparagraphs 1.a—1.e:	For Applicant
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Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant access to classified information.

Michael H. Leonard
Administrative Judge