



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



In the matter of: )  
 )  
----- ) ISCR Case No. 15-01023  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

10/31/2016

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for access to classified information. She did not present sufficient documentary evidence to establish that she is making a good-faith effort to repay or otherwise resolve more than \$17,000 in delinquent student loans. 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 September 3, 2013.<sup>1</sup> About two years later on September 21, 2015, after reviewing the application and information gathered during a background investigation, the Department of Defense (DOD)<sup>2</sup> sent Applicant a statement of reasons

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

<sup>2</sup> 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.

(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.<sup>3</sup> 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 and enclosed documents on October 15, 2015.

Neither Applicant nor Department Counsel requested a hearing, and so the case will be decided on the written record.<sup>4</sup> On December 28, 2015, Department Counsel submitted all relevant and material information that could be adduced at a hearing.<sup>5</sup> The file of relevant material (FORM) was mailed to Applicant, who received it on February 22, 2016. She did not reply within the 30-day period from receipt of the FORM. The case was assigned to me several months later on October 11, 2016.

### **Procedural Matters**

Applicant submitted a number of documents along with her answer to the SOR. For clarity of the written record, the documents are marked and admitted as evidentiary exhibits as follows: (1) Exhibit A—student loan account statement, dated October 20, 2015 (2 pages); (2) Exhibit B—TransUnion credit report, dated October 8, 2015 (9 pages); (3) Exhibit C—TransUnion credit report, dated August 25, 2013 (14 pages); and (4) Exhibit D—copy of Applicant’s birth certificate (1 page).

Department Counsel’s FORM includes Exhibit 3, which is a report of investigation (ROI) summarizing Applicant’s interview that took place during the October 2013 background investigation. The summary, Exhibit 3, is not authenticated as required under ¶ E3.1.20 of the Directive. Department Counsel’s written brief includes a footnote advising Applicant that the summary was not authenticated and that failure to object may constitute a waiver<sup>6</sup> of the authentication requirement. Nevertheless, a *pro se* applicant’s failure to respond to the FORM does not equate to a knowing and voluntary

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<sup>3</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>4</sup> Directive, Enclosure 3, ¶ E3.1.7.

<sup>5</sup> 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.

<sup>6</sup> See *Black’s Law Dictionary*, 1717 (Bryan A. Garner ed., 9<sup>th</sup> ed., West 2009), for a definition of waiver.

waiver of the authentication requirement.<sup>7</sup> The written record does not demonstrate that Applicant understood the concepts of authentication, waiver, and admissibility. It also does not establish that she understood the implications of waiving an objection to the admissibility of the ROI. Accordingly, Exhibit 3 is inadmissible and I have not considered the information in the ROI.

### **Findings of Fact**

Applicant is a 30-year-old employee who requires a security clearance for her job working in the operations department of a security-monitoring company. She has been so employed since 2013. This is the first time she has applied for a security clearance. She has never married and has no children. She has lived at the same residence since 2006. Her educational background includes a high school diploma awarded in 2004, some community college thereafter without the award of a degree, and a certificate in child care awarded in 2011.

In her 2013 security clearance application, Applicant disclosed four delinquent student loans for a total of about \$10,866, but otherwise reported no delinquent financial accounts.<sup>8</sup> A credit report obtained during the 2013 background investigation shows Applicant then had seven student loans in collection for a total of \$17,321 as well as three student loan accounts in collection but with balances of \$0.<sup>9</sup>

Under Guideline F, the SOR alleged 11 delinquent accounts consisting of 9 of the 10 student loan accounts for a total of \$17,321 as well as 2 consumer accounts (one charged-off account with no amount alleged and a second charged-off account for \$423). The former charged-off account was settled for a lesser amount in September 2015,<sup>10</sup> and the latter charged-off account for \$423 is considered a minor matter at most. Neither charged-off account is discussed further herein.

In her answer to the SOR, Applicant included a student loan account statement.<sup>11</sup> It shows two defaulted federal education debts were assigned to the particular company for collection in the amount of \$5,467 for each loan for a total of \$10,934. The account statement does not show a record of payments. Otherwise, she submitted no

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<sup>7</sup> See generally ISCR Case No. 12-10933 (App. Bd. June 29, 2016) (In a concurring opinion, Judge Ra'anan notes the historical concern about reports of investigation in that they were considered by some to present a heightened problem in providing due process in security clearance cases. Judge Ra'anan raises a number of pertinent questions about using an unauthenticated ROI in a non-hearing case, including how plausible is it to believe that a *pro se* applicant's failure to respond to a FORM should be understood as a knowing and intelligent waiver to the requirement for authentication of the ROI?).

<sup>8</sup> Exhibit 2 at 34–37.

<sup>9</sup> Exhibit 4.

<sup>10</sup> Exhibit 6 at 2.

<sup>11</sup> Exhibit A.

documentation showing that the nine student loans in the SOR were paid, settled, in a payment plan, cancelled, forgiven, or otherwise resolved.<sup>12</sup>

### Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>13</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>14</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>15</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>16</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>17</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>18</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>19</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>20</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>21</sup>

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<sup>12</sup> Although Applicant’s October 2015 credit report (Exhibit B) does not list any of the student loan accounts, I cannot accept that as proof of payment or resolution, because an account can disappear from a credit report for various reasons (such as age) unrelated to a debtor repaying a creditor.

<sup>13</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>14</sup> 484 U.S. at 531.

<sup>15</sup> Directive, ¶ 3.2.

<sup>16</sup> Directive, ¶ 3.2.

<sup>17</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>18</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>19</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>20</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>21</sup> *Egan*, 484 U.S. at 531.

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>22</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 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>23</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**

Under Guideline F for financial considerations,<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

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.

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<sup>22</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>23</sup> Executive Order 10865, § 7.

<sup>24</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>25</sup> 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).

<sup>26</sup> AG ¶ 18.

In analyzing this case, I considered the following disqualifying and mitigating conditions under Guideline F:<sup>27</sup>

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

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

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. The written record shows that Applicant has more than \$17,000 in delinquent student loans. Moreover, she did not present sufficient documentation to show that she is addressing the delinquent loans in a reasonable fashion. As pointed out in Department Counsel's brief, Applicant did not present documentation showing that the several delinquent student loan accounts in the SOR are in fact included in the student loan account statement, which appears to cover just two loans.<sup>28</sup> She has not established that her delinquent student loans are resolved or under control. Nor has she established that she is making a good-faith effort to repay the delinquent student loans.

Because Applicant chose to have her case decided on the written record, I am unable to evaluate her demeanor, credibility, or sincerity. She also chose not to respond to the FORM with relevant and material documentation, which may have helped to mitigate the concern. Given the state of the written record, I can only conclude that Applicant's delinquent student loans are unresolved.

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.<sup>29</sup> 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.

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<sup>27</sup> AG ¶ 20(a)–(f).

<sup>28</sup> Department Counsel's brief at 2; Exhibit A.

<sup>29</sup> AG ¶ 2(a)(1)–(9).

### **Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c–1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i–1.k:	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