



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



In the matter of:)
)
-----) ISCR Case No. 15-01061
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

11/04/2016

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 \$50,000 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 August 12, 2014.¹ About one year later on August 22, 2015, after reviewing the application and information gathered during a background investigation, the Department of Defense (DOD)² sent Applicant a statement of reasons

¹ Exhibit 3 (this document is commonly known as a security clearance application).

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.

(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 one-page memorandum on November 4, 2015.

Neither Applicant nor Department Counsel requested a hearing, and so the case will be decided on the written record.⁴ On March 8, 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 March 11, 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 November 2, 2016.

Procedural Matters

Department Counsel's FORM includes Exhibits 5 and 6, which are reports of investigation (ROI) summarizing Applicant's interviews that took place during the October–November 2014 background investigation. The summaries are 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 waiver⁶ of the authentication requirement. Nevertheless, a *pro se* applicant's failure to respond to the FORM does not equate to a knowing and voluntary waiver of the authentication requirement.⁷ 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, Exhibits 5 and 6 are inadmissible and I have not considered the information in the ROI.

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 See *Black's Law Dictionary*, 1717 (Bryan A. Garner ed., 9th ed., West 2009), for a definition of waiver.

⁷ See generally ISCR Case No. 12-10933 (App. Bd. June 29, 2016) (In a concurring opinion, Judge Ra'anani 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'anani 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.).

Findings of Fact

Applicant is a 43-year-old employee who requires a security clearance for her job working as a configuration specialist for an aerospace company. She has been so employed since 2013. This is the first time she has applied for a security clearance. She married in 1994, divorced in 2012, and has two adult children. She has lived at the same residence since 2011 with a cohabitant. Her educational background includes a bachelor's degree awarded in 2005. Other than a month of unemployment in 2012, she has been continuously employed since at least 2004, although several of the jobs appear to be not highly paid, such as teacher's aide, substitute teacher, and server.

In her 2014 security clearance application, Applicant disclosed that she was delinquent on federal student loans in the amount of \$48,000. She explained that she was trying to resolve the issue with an affordable payment plan. Otherwise, she reported no delinquent financial accounts.

Under Guideline F, the SOR alleged 17 delinquent accounts for a total of about \$61,000. The 17 delinquent accounts consist of 2 student loan accounts in collection for about \$53,000, and 15 delinquent consumer accounts for the remaining balance. The delinquent accounts are established by credit reports as well as Applicant's admissions mentioned below.⁸

In her answer to the SOR, Applicant admitted responsibility for the 17 delinquent accounts. She attributed her financial problems to her failed marriage and divorce, which resulted in an inability to pay for everything she owed, although she was working to get back on track. She stated that the student loan accounts were in a rehabilitation program. She further stated that she intended to or was in fact repaying the delinquent consumer accounts. She provided no supporting documentation to show that any of the delinquent accounts were paid, settled, in a payment plan, cancelled, forgiven, or otherwise resolved. Likewise, she did not provide supporting documentation in response to the FORM.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁹ 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

⁸ Exhibits 4 and 7.

⁹ *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).

side of denials.”¹⁰ 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.¹¹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹²

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹³ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁴ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁵ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁶ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁷ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁸

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.¹⁹ Instead, it

¹⁰ 484 U.S. at 531.

¹¹ Directive, ¶ 3.2.

¹² Directive, ¶ 3.2.

¹³ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁴ Directive, Enclosure 3, ¶ E3.1.14.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ *Egan*, 484 U.S. at 531.

¹⁸ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁹ Executive Order 10865, § 7.

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,²⁰ 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.²¹ 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.²²

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:²³

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 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;

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

²¹ 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).

²² AG ¶ 18.

²³ AG ¶ 20(a)–(f).

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 \$50,000 in delinquent student loans and more than \$60,000 in delinquent debt. Moreover, she did not present sufficient documentation to show that she is addressing the delinquent debt in a reasonable fashion. It is most probably that her divorce in 2012 was a causative factor in her financial problems. But she has not acted responsibly under the circumstances, because she has not been repaying the delinquent debt since beginning her current employment in 2013. She has not established that her delinquent debt is resolved or under control. Nor has she established that she is making a good-faith effort to repay her delinquent debt.

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 debt is wholly 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.²⁴ 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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | Against Applicant |
| Subparagraphs 1.a–1.q: | Against Applicant |

²⁴ AG ¶ 2(a)(1)–(9).

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