



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04294

Appearances

For Government: Charles Hale, Esq., Department Counsel
For Applicant: *Pro se*

05/05/2017

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke her eligibility for access to classified information. She failed to present sufficient evidence to explain, extenuate, or mitigate the security concern stemming from her problematic financial history. 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 July 22, 2014. This document is commonly known as a security clearance application. Thereafter, on March 8, 2016, 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 action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR on May 9, 2016. Her response consisted of a three-page memorandum in which she addressed each delinquent debt and offered a summary explanation for her financial situation; she also included two letters of recommendation and proof of payment for the \$565 medical collection account in SOR ¶ 1.k; and she requested a decision based on the written record in lieu of a hearing.

On June 17, 2016, Department Counsel submitted all relevant and material information that could be adduced at a hearing. The file of relevant material (FORM) consists of Department Counsel's written brief and supporting documentation, some of which are identified as evidentiary exhibits in this decision. The FORM was mailed to Applicant, who received it June 29, 2016. She did not reply within 30 days from receipt of the information as required under the Directive. The case was assigned to me on May 3, 2017.

Procedural Matters

Department Counsel's FORM includes Exhibit 4, which is a report of investigation (ROI) summarizing Applicant's interview that took place during the November 2014 background investigation. The ROI is not authenticated by a witness, which is expressly required under ¶ E3.1.20 of the Directive.² In addition, the Directive provides no exception to the authentication requirement. 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 of the authentication requirement. Nevertheless, the record does not demonstrate that Applicant, who has not replied to the FORM, understood the concepts of authentication, waiver, and admissibility. It also does not demonstrate that she understood the implications of waiving an objection to the admissibility of the ROI. Accordingly, Exhibit 4 is inadmissible and I have not considered it.

Findings of Fact

Applicant is a 35-year-old employee who requires a security clearance for her employment as a federal contractor. She has worked as a senior information security

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), 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 See generally ISCR Case No. 12-10933 (App. Bd. Jun. 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 with a *pro se* applicant.).

engineer since 2012. The Defense Department previously granted her a secret-level security clearance in 2004. Per her security clearance application, she has worked full-time as a federal contractor since 2004, with periods of unemployment from November 2005 to April 2006 and from August 2006 to October 2006. She has never married and has no children.

In her July 2014 security clearance application, Applicant disclosed an \$8,000 medical account more than 120 days past due. Otherwise, she reported no other adverse financial information in response to the various questions.

Under Guideline F for financial considerations, the SOR alleges, in ¶ 1.a through ¶ 1.r, a history of financial problems or difficulties consisting of 18 delinquent accounts ranging in amounts from \$52 to \$14,222 for a total of nearly \$36,000. Twelve of the eighteen accounts are medical collection accounts for a total of \$9,655. The other six accounts consist of a past-due mortgage in the amount of \$14,222, a charged-off account for \$10,925, and four collection accounts for a total of \$1,178. In her answer to the SOR, she admitted 15 of the 18 delinquent accounts; and she denied a \$135 collection account, a \$112 medical collection account, and a \$123 collection account. In addition to her admissions, the 18 delinquent accounts are established by credit reports from August 2014 and November 2015.³

In her answer to the SOR, Applicant explained that she experienced a major financial crisis at the beginning of 2015, when she and her fiancée separated and he moved out of the house.⁴ Her income was insufficient to meet her expenses, and she noted that the majority of the accounts are for medical expenses. She further explained that she downsized her housing and bills by over half in June 2015, and she has been working to rebuild her credit worthiness. She presented proof of payment for the \$565 medical collection account in SOR ¶ 1.k. But she did not present any other documentation in support of her statements in her answer that accounts were paid, in a payment arrangement, in dispute, or otherwise resolved. Her two letters of recommendation are quite favorable.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁵ 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.”⁶ Under *Egan*, Executive Order 10865, and the Directive, any doubt

³ Exhibits 5 and 6.

⁴ In contrary, the August 2014 credit report lists 19 accounts in the collections section of the report, some of which were paid or settled.

⁵ *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).

⁶ 484 U.S. at 531.

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.⁷ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁸

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁰ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹¹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹²

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹³ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁴

Discussion

Under Guideline F for financial considerations,¹⁵ 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.¹⁶

⁷ Directive, ¶ 3.2.

⁸ Directive, ¶ 3.2.

⁹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁰ Directive, Enclosure 3, ¶ E3.1.14.

¹¹ Directive, Enclosure 3, ¶ E3.1.15.

¹² Directive, Enclosure 3, ¶ E3.1.15.

¹³ *Egan*, 484 U.S. at 531.

¹⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁵ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

¹⁶ AG ¶ 18.

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:

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;

AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there 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 have given little weight to the 11 medical collection accounts that remain unresolved. It is presumed that those debts were incurred for necessary medical care or treatment as opposed to frivolous or irresponsible spending or otherwise living beyond one's means. Medical debt is unlike other types of debt. It is usually unplanned, unexpected, and nondiscretionary. And it can add hundreds if not thousands of dollars in debt in a short period, which can be overwhelming for a debtor. In my view, having less than \$10,000 in unresolved medical collection accounts does not fatally undermine Applicant's security suitability. Accordingly, the allegations in SOR ¶¶ 1.a-1.f and 1.j-p are decided for Applicant.

The same cannot be said for the other matters, which consist of a past-due mortgage loan, a \$10,925 charged-off account, and four collection accounts for a total of about \$1,200. She did not present any documentation for these six accounts, including a realistic plan to resolve them. And there is certainly no track record showing that she will adhere to a plan.

Based on the written record before me, I am unable to credit Applicant in explanation, extenuation, or mitigation of her problematic financial history. In reaching that conclusion, I note that her financial problems are connected to the breakup of a relationship at the beginning of 2015, which was a circumstance largely beyond her

control. Nevertheless, she has had ample time and opportunity to initiate the process of putting her financial house in order and have supporting documentation showing she has in fact done so. Documentation is necessary because the DOD security-clearance process, like other large bureaucratic institutions (for example, banks, insurance companies, and universities), does not run on word-of-mouth; it runs on paperwork.¹⁷ It's the responsibility of the individual applicant to produce relevant documentation in support of their case.¹⁸ Here, Applicant has not met her burden of production because she did not present sufficient documentation showing she is making a good-faith effort to resolve the remaining six delinquent accounts.

Applicant's history of financial problems 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*. I also considered the whole-person concept. 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:	For Applicant
Subparagraphs 1.g-1.i:	Against Applicant
Subparagraphs 1.j-1.p:	For Applicant
Subparagraphs 1.q-1.r:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant access to classified information.

Michael H. Leonard
Administrative Judge

¹⁷ See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (it is reasonable to expect applicants to present documentation about the satisfaction of specific debts).

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.