



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04815

Appearances

For Government: Rhett Petcher, Esq., Department Counsel

For Applicant: *Pro se*

04/06/2017

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for access to classified information. She presented sufficient evidence to explain, extenuate, or 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 July 30, 2014. This document is commonly known as a security clearance application. About a year and a half later, on January 17, 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

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

action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on March 8, 2016, and requested a decision based on the written record without a hearing.

On May 4, 2016, Department Counsel submitted a file of all relevant and material information (FORM).² Included in the relevant and material information were five items of evidence, which are admitted into evidence as Government Exhibits 1 through 5. The FORM was mailed to Applicant, who received it on May 23, 2016. She responded to the FORM on June 20, 2016. Her response addressed each SOR allegation and included documents, which are marked as Applicant's Exhibits A through I, and they are admitted into evidence. The case was assigned to me on March 10, 2017.

Procedural Matters

Department Counsel's FORM includes Exhibit 3, which is a report of investigation (ROI) summarizing Applicant's interview that took place during the September 2014 background investigation. The ROI is not authenticated as required under ¶ E3.1.20 of the Directive.³ Department Counsel's written brief includes a footnote advising Applicant that the summary was not authenticated and that her failure to object may constitute a waiver of the authentication requirement. The footnote is prominently prefaced with a bolded, upper-case notice to Applicant and flagging for Applicant the importance of the footnote, which then explains the concepts of authentication and waiver. In a case such as this, where Applicant has responded to the FORM, it is fair to conclude that Applicant read the footnote, understood it, and chose not to object to the ROI. The ROI is, therefore, admissible.

Findings of Fact

Applicant is 50 years old, and at the time of her security clearance application she had been employed since October 2001 by a defense contractor. She has three adult children and one minor child. The SOR alleged 17 delinquent debts totaling approximately \$24,640. Applicant's answer to the SOR indicated that 15 of the debts had been paid, were under a payment plan, or had been forgiven. She did not, however, provide any supporting documentation.⁴ Based on Applicant's response to the FORM and the documents she submitted with that response, I find that the following SOR debts have

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

³ 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.).

⁴ Exhibit 1.

been paid or otherwise resolved: SOR paragraphs 1.b. through 1.g. and paragraphs 1.i. through 1.q.⁵ Applicant did not provide any evidence showing that the judgment alleged in SOR paragraph 1.a. has been resolved, although in her response to the FORM she claimed to have paid that judgment in full and was awaiting court documentation. Nor did Applicant provide any evidence that the debt alleged in SOR paragraph 1.h. had been resolved, although her response to the FORM indicated that she is in contact with that creditor to resolve that debt. I further find that Applicant fell behind on some of her credit card payments in 2009 when her father became ill, and she had to take care of his medical bills. She attributes six of the SOR debts to her need to pay for her father's medical needs.⁶ The seven medical accounts alleged in the SOR were for Applicant's own medical treatments, which accounts she learned of for the first time during her background investigation. She had thought that those bills had been paid by her medical insurance.⁷

Law and Policies

It is well-established law that no one has a right to a security clearance.⁸ 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."⁹ 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.¹⁰ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹¹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹² The Government has the burden of presenting

⁵ Exhibits A – I.

⁶ Exhibit 3.

⁷ Exhibit 3.

⁸ *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).

⁹ 484 U.S. at 531.

¹⁰ Directive, ¶ 3.2.

¹¹ Directive, ¶ 3.2.

¹² ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

evidence to establish facts alleged in the SOR that have been controverted.¹³ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁴ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁵

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁶ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁷

Discussion

Under Guideline F for financial considerations,¹⁸ 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.¹⁹

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:

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

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

¹³ Directive, Enclosure 3, ¶ E3.1.14.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

¹⁶ *Egan*, 484 U.S. at 531.

¹⁷ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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

¹⁹ AG ¶ 18.

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;

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 supports a conclusion that Applicant has had a problematic financial history sufficient to raise a security concern under AG ¶¶ 19(a) and (c). The un rebutted evidence, however, is that Applicant went into arrears on certain credit lines when her father became ill in 2009, thus requiring her to assume the obligation to pay for his medical treatments. The evidence supports the conclusion that her indebtedness was caused by circumstances largely beyond her control, as contemplated by AG ¶ 20(b). Applicant provided documents evidencing her payment or other resolution of 15 of the 17 debts, reducing the total outstanding debts to just under \$6,000. Department Counsel, in his rebuttal to Applicant's response to the FORM, makes the fair point that most of the debts were resolved after Applicant received either the SOR or the FORM. The record, however, shows that Applicant reduced the indebtedness by nearly \$8,000, one debt for just under \$300 in 2009 and another debt for just under \$7,500 in 2013, well before the security clearance process commenced.²⁰ That two of the debts are not yet resolved is not determinative. An applicant is not required to show that every debt in the SOR has been paid. Rather, an applicant is required to demonstrate that he or she has "established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008).²¹ I conclude that Applicant acted responsibly under the circumstances, that there are clear indications that her financial problems are being resolved, or are under control, and she made good-faith efforts to pay or otherwise resolve her indebtedness.²²

The record does not create doubt about Applicant's 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 Applicant 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.

²⁰ Exhibits F & G.

²¹ See *also* ISCR Case No. 14-00504 at 3 (Aug. 4, 2014).

²² AG ¶ 20(b), (c) & (d).

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a – 1.q.: For Applicant

Conclusion

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

Philip J. Katauskas
Administrative Judge