



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04959

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

04/13/2017

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 June 27, 2014. This document is commonly known as a security clearance application. Thereafter, on December 16, 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. Applicant answered the SOR in an undated response. She also requested a decision based on the written record in lieu of a hearing.

On June 29, 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 July 8, 2016. To date, she has not replied. The case was assigned to me April 11, 2017.

Procedural Matters

Department Counsel's FORM includes Exhibit 7, which is a report of investigation (ROI) summarizing Applicant's interview that took place during the July 2014 background investigation. The ROI is not authenticated as 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 3 is inadmissible and I have not considered it.

Findings of Fact

Applicant is a 42-year-old employee who requires a security clearance for employment with a company doing business in the defense industry. She has worked as a logistic/configuration specialist for this company since 2008. The Defense Department previously granted her a secret-level security clearance in 2003. It is unclear if she is seeking to retain that clearance, or if her previous clearance lapsed and it is necessary for her to obtain a clearance. She is twice married and divorced, the most recent divorce occurring in 2011. She has a minor child, born in 2001.

In her June 2014 security clearance application, Applicant answered all questions in the negative, thereby denying the existence of adverse information or delinquent accounts in her financial record. Under Guideline F for financial considerations, the SOR alleges, in ¶ 1.a through ¶ 1.ww, a history of financial problems

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.).

consisting of a bankruptcy case in 2007-2009 as well as 48 delinquent debts for a total of about \$69,000. In her answer to the SOR, she admitted all the allegations, but she believed the debts in SOR ¶¶ 1.b, 1.d, and 1.vv were duplicates of other debts in the SOR. In addition to her admissions, the bankruptcy and the 48 delinquent debts are established by the documentary evidence included in the FORM.³

Concerning the bankruptcy, the case paperwork shows that Applicant sought relief via a joint Chapter 13 bankruptcy case in 2007 for her and her then husband.⁴ The court approved the payment plan in 2008, and they paid in about \$13,751 until about April 2009, when the case was converted to a Chapter 7 case. The bankruptcy court granted Applicant and her then husband a discharge in September 2009, which included about \$31,790 in unsecured debts listed on Schedule F. The discharge released Applicant and her then husband from any further personal liability for their pre-bankruptcy debts, except for any debt that may have been reaffirmed or for any debt not subject to discharge (e.g., back taxes owed to the IRS).

The 48 delinquent debts cover a variety of accounts: (1) 4 unpaid judgments obtained in 2013-2014 for about \$11,366 in total; (2) 9 medical collection accounts for about \$1,523 in total; (3) 20 collection accounts for returned checks to Papa John's Pizza during 2013-2014 for a total of about \$1,260; (4) student loan accounts; and (5) numerous accounts in collection or charged-off status. In her answer to the SOR, she said she believed that two of the unpaid judgments were duplicates of the other unpaid judgments. Review of the credit reports shows that the judgments were filed on different dates with different amounts, and case numbers are different.⁵ She also said she believed two accounts with deficiency balances after repossession were duplicates. Review of the credit reports shows they were separate auto loans with different terms of repayment (60 months at \$380 monthly and 36 months at \$341 monthly). Her claims of duplication are not supported by the written record.

Applicant did not present supporting documentation when she answered the SOR. Likewise, she did not reply to the FORM. She has not presented documented proof that any of the 48 delinquent debts were paid or settled, are in a payment plan, or were cancelled, forgiven, or otherwise resolved.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁶ As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent

³ Exhibits 4, 5, and 6.

⁴ Exhibit 6.

⁵ Exhibits 4 and 5.

⁶ *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).

standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ 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.⁸ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁰ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹¹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹² In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹³

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁴ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁵

Discussion

Under Guideline F for financial considerations,¹⁶ 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

⁷ 484 U.S. at 531.

⁸ Directive, ¶ 3.2.

⁹ Directive, ¶ 3.2.

¹⁰ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹¹ Directive, Enclosure 3, ¶ E3.1.14.

¹² Directive, Enclosure 3, ¶ E3.1.15.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ *Egan*, 484 U.S. at 531.

¹⁵ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁶ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

questions about a [person's] reliability, trustworthiness, and ability to protect classified information.¹⁷

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(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 unresolved medical collection accounts. It is presumed that those debts were incurred for necessary medical care or treatment as opposed to frivolous or irresponsible spending. In my view, the unresolved medical collection accounts do not undermine Applicant's security suitability. Accordingly, the allegations in SOR ¶¶ 1.g, 1.h, 1.i, 1.j, 1.l, 1.m, 1.n, 1.dd, and 1.ee are decided for Applicant.

The same cannot be said for the other matters. Applicant's financial history includes a not-too-distant bankruptcy case, which started under Chapter 13 as a court-approved payment plan and was then converted to a Chapter 7 case. There also remains 39 delinquent debts for a sizeable sum of money, more than \$60,000. She has not presented a realistic plan to resolve those matters, and there is certainly no track record showing that she will adhere to a plan. Given all the facts and circumstances, I conclude that her financial problems are unresolved, ongoing, and will continue unabated.

Based on the written record before me, I am unable to credit Applicant in explanation, extenuation, or mitigation of her problematic financial history. She has had ample time and opportunity since submitting her security clearance application in June 2014 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

¹⁷ AG ¶ 18.

example, banks, insurance companies, and universities), does not run on word-of-mouth; it runs on paperwork. 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 any supporting documentation.

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*. 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:	Against Applicant
Subparagraphs 1.g-1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraphs 1.l-1.n:	For Applicant
Subparagraphs 1.o-1.cc:	Against Applicant
Subparagraphs 1.dd-1.ee:	For Applicant
Subparagraphs 1.ff-1.ww:	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

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.