



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



In the matter of:)
)
-----) ISCR Case No. 15-06748
)
Applicant for Security Clearance)

Appearances

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

08/31/2017

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to revoke her eligibility for access to classified information. Applicant mitigated the security concern raised by 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 December 10, 2014. This document is commonly known as a security clearance application. On March 4, 2016, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant his eligibility for access to classified information.¹ It detailed the factual reasons for

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),

the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on April 13, 2016, and requested a decision based on the written record without a hearing.

On September 19, 2016, Department Counsel submitted a file of relevant material (FORM).² The FORM was mailed to Applicant September 20, 2016. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant received the FORM on October 3, 2016.³ Applicant did not respond to the FORM. The case was assigned to me on July 1, 2017.

Because of the age of this case, I *sua sponte* reopened the record on July 25, 2017, and so advised Applicant and Department Counsel. I did so to allow Applicant to (1) review the revised Adjudicative Guidelines (effective June 8, 2017), and (2) supplement the record to update the current status of her indebtedness. I left the record open until close of business August 18, 2017. By email dated August 18, 2017, Applicant submitted six documents, which I have marked as Applicant's Exhibits (AE) A through F, and which without objection are admitted into evidence.

Procedural Matters

Included in the FORM were seven items of evidence, which are marked as Government Exhibits (GE) 1 through 5.⁴ Exhibits 1 through 3 and 5 are admitted into evidence. Exhibit 4 is a report of investigation (ROI) summarizing Applicant's interview that took place during the April 2015 background investigation. The ROI is not authenticated, as required under ¶ E3.1.20 of the Directive.⁵ 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. The footnote is prominently prefaced with a bolded, upper-case notice to

effective within the Defense Department on June 8, 2017, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2016). In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. My Decision and Formal Findings under the revised Guideline F would not be different under the 2006 Guideline F.

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 The Defense Office of Hearings and Appeals' (DOHA) transmittal letter is dated September 20, 2016, and Applicant's receipt is dated October 3, 2016. The DOHA transmittal letter informed Applicant that she had 30 days after receiving it to submit information.

⁴ The first item in the FORM is the SOR, and the second item is Applicant's Answer. Because the SOR and the Answer are the pleadings in this case, they are not marked as Exhibits. Items 3 through 7 are marked as Exhibits 1 through 5.

⁵ 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.).

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 (although belatedly, after I reopened the record), 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 31 years old and a high school graduate with some college credits. She is unmarried but has a long-time boyfriend/cohabitant.⁶ Applicant has two daughters ages 8 and 11 who live with her and her boyfriend. Since January 2003, Applicant has been employed by a defense contractor.⁷

The SOR alleged 14 delinquent debts totaling \$14,437. In her answer, Applicant admitted those debts and submitted documents showing the resolution of some of them. She showed evidence that she has resolved SOR ¶¶ 1.a, d, e, i, l, and m, totaling \$9,264. The documents Applicant submitted in response to the reopening of the record showed that she has resolved SOR ¶¶ 1.b, c, k, and n, totaling \$563. As for the remaining debts, Applicant provided documents evidencing her good-faith efforts to repay those overdue debts.

Applicant attributes her financial problems to her boyfriend's unexpected loss of employment and his income in 2014. This is consistent with Applicant's credit history.⁸ As of her background interview in April 2015, he still was unemployed but actively looking for another job. Three of the debts are for medical accounts incurred when one of her daughters needed to be hospitalized for asthma.⁹

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁰ 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."¹¹ Under *Egan*, Executive Order 10865, and the Directive, any doubt about

⁶ Applicant's security clearance application said that they began living together in January 2003. GE 1. In her interview, she said they began living together in May 2005. GE 4. In any event, this is a long-time relationship.

⁷ GE 1.

⁸ GE 3.

⁹ GE 4. Those medical debts total \$248 for which there was apparently no insurance coverage.

¹⁰ *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).

¹¹ 484 U.S. at 531

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.¹² An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁴ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁷

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁸ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁹

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. The overall concern is:

Failure 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 or sensitive information.²¹

¹² Directive, ¶ 3.2.

¹³ Directive, ¶ 3.2.

¹⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁵ Directive, Enclosure 3, ¶ E3.1.14.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ *Egan*, 484 U.S. at 531.

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

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

²¹ 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 to satisfy debts;

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

AG ¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

AG ¶ 20(d) the individual initiated and is adhering to 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 going back to 2014. This raises security concerns under AG ¶¶ 19(a) and (c). The next inquiry is whether any mitigating conditions apply.

Applicant's boyfriend has been a long-time contributor to the household finances. His unexpected loss of employment in 2014 is a condition completely beyond Applicant's control. AG ¶ 20(b) applies, subject to inquiring whether Applicant acted responsibly under the adverse circumstances she faced. By payment, payment plans, or otherwise, Applicant reduced the SOR debts from \$14,437 to \$4,600. That shows responsible conduct under AG ¶ 20(b). It also shows that AG ¶ 20(d) applies.²² 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]

²² In my view, having less than \$300 of unresolved medical debt does not reflect adversely on Applicant's suitability for a security clearance.

financial problems and taken significant actions to implement that plan.”²³ The dramatic debt reduction that Applicant has achieved is evidence of a successful plan.

The record does not raise doubts 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*. I also gave due consideration to the whole-person concept.²⁴ 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.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

Paragraph 1, Guideline F:	For Applicant
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Subparagraphs 1.a-1.n:	For Applicant
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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

²³ ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008). See *also* ISCR Case No. 14-00504 at 3 (Aug. 4, 2014).

²⁴ AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6).