



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



In the matter of:)
)
 -----) ISCR Case No. 15-07469
)
 Applicant for Security Clearance)

Appearances

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

09/12/2017

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 November 18, 2015. This document is commonly known as a security clearance application. On July 18, 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 August 18, 2016, and requested a decision based on the written record without a hearing.

On September 2, 2016, Department Counsel submitted a file of relevant material (FORM).² The FORM was mailed to Applicant on the same date. 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 September 14, 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 August 3, 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 31, 2017. By Express Mail dated August 30, 2017, and received by DOHA on August 31, 2107, Applicant submitted a seventeen page document (which includes Applicant's cover letter), which I have marked as Applicant's Exhibit (AE) A, and which without objection is admitted into evidence.

Procedural Matters

Included in the FORM were three items of evidence, which are marked as Government Exhibits (GE) 1 and 2 and admitted into evidence.⁴

Findings of Fact

Applicant is 45 years old and a high school graduate with some college credits. She is divorced since April 2004 and has two minor children who live with her. Since November 2015, she has been employed by a defense contractor.⁵

The SOR alleged three bankruptcy filings and 18 delinquent debts totaling \$12,251. In her answer, Applicant admitted the SOR allegations. Eleven of those debts

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 2, 2016, and Applicant's receipt is dated September 14, 2016. The DOHA transmittal letter informed Applicant that she had 30 days after receiving it to submit information.

⁴ The first item of evidence consists of the SOR and Applicant's Answer. Because the SOR and the Answer are the pleadings, they are not marked as exhibits.

⁵ She also has four adult children who do not live with her. GE 1.

are for medical accounts totaling \$4,319. The documents Applicant submitted in response to the reopening of the record showed that she has resolved 12 of those debts (totaling \$9,856) by payments, payment plans, or otherwise.⁶ In her response to the FORM, Applicant stated that she is working on setting up payment plans for the debts she has not yet resolved.⁷

Applicant attributes her financial problems to being a single mother, numerous periods of unemployment, and lack of health insurance for herself and her children.⁸ This is consistent with her security clearance application, which disclosed periods of unemployment from December 2013 to February 2014, March 2013 to July 2013, September 2011 to August 2012, and from August 2004 to June 2006 (following her divorce and caring for her children). None of those job losses were for cause. The Chapter 7 bankruptcy in 2007 was discharged, but the Chapter 13 bankruptcies in 2006 and 2013 were dismissed, because Applicant could not keep up the payments due to her job losses.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 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

⁶ The debts resolved are SOR ¶¶ 1.e, h-j, l, n, and p through u. Applicant resolved all but two of the medical accounts (totaling \$855).

⁷ AE A.

⁸ Answer, p.4.

⁹ Answer; GE 1.

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

¹² Directive, ¶ 3.2.

¹³ Directive, ¶ 3.2.

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

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:

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.

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 2006. This raises security concerns under AG ¶¶ 19(a) and (c). The next inquiry is whether any mitigating conditions apply.

Applicant's financial problems were the result of a combination of factors, numerous periods of employment not caused by Applicant, divorce, being a single mother for two children, and lack of medical insurance coverage for herself and her children. Those are conditions largely beyond her control, thus triggering AG ¶ 20(b).

The next question under that mitigating condition is whether Applicant acted responsibly in light of those conditions. Applicant understandably sought the protection of bankruptcy, but other than a successful Chapter 7 discharge in 2007, her financial condition persisted such that she could not sustain her payments under her Chapter 13 proceedings. If the record ended there, it would be a close call to find that Applicant acted responsibly. But the record does not end there. In her response to the FORM, Applicant presented evidence that she has mitigated \$9,856 of the total SOR debt of \$12,251. That includes the mitigation of all but \$855 of the \$4,319 medical debts alleged.²² I find that Applicant acted responsibly under AG ¶ 20(b), and that AG ¶ 20(d) applies, as well. She is also working to set up payment plans with those creditors whose debts she has not yet resolved.

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

²² Medical debt is unlike other types of debts. It is presumed to be incurred for necessary medical treatment. It is usually unplanned. And it can add substantial amounts of debt in a short period of time. In my view, having less than \$1,000 of unresolved medical debt does not reflect adversely on Applicant's suitability for a security clearance.

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.u:	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).