



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 15-08005

Appearances

For Government: Charles Hale, Esq., Department Counsel

For Applicant: *Pro se*

08/07/2017

Decision

LEONARD, Michael H., 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 a history of financial problems. She did not falsify her security clearance application when she failed to disclose her financial problems. 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 May 6, 2015. This document is commonly known as a security clearance application. Thereafter, on March 5, 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. The SOR is similar to a complaint. It detailed the factual reasons for the

action under the security guidelines known as Guideline F for financial considerations and Guideline E for personal conduct (falsification).

Applicant answered the SOR on March 28, 2016; her responses were mixed; and her answer included a one-page memorandum in explanation. She also requested a hearing before an administrative judge. The hearing took place as scheduled on December 6, 2016. The hearing transcript (Tr.) was received on December 14, 2016.

Findings of Fact

Applicant is a 53-year-old employee who is seeking a security clearance for the first time for her employment as a federal contractor. She has worked as a security guard since April 2015. Before that, she was unemployed for about three months. Before that, she worked as a security guard for about two months. Before that, she worked as an office assistant from October 2014 to January 2015. Before that, she worked as a cashier in a full-time temporary position for about two months. Before that, she was unemployed from August 2014 to November 2014. And before that, she worked full-time as a warehouse worker from July 2012 to August 2014, when she was terminated due to a safety violation.

Applicant's educational background includes an associate's degree awarded in April 2006. She explained that she has a learning or reading disability (slight dyslexia) that interferes with her reading comprehension. She presented a high-school education record showing that she was placed in a resource room for the subjects of English and math.¹ She attended a technical college during 2004-2006, which she financed via student loans.

In her May 2015 security clearance application, Applicant, in response to Question 26 concerning financial matters, answered all questions in the negative, thereby denying any delinquent, collection, or past-due accounts as well as other financial problems (e.g., failure to timely file tax returns).² The background investigation established otherwise.³ She denied that she deliberately falsified her answers to Question 26, and she explained that she did not understand the question due to her reading disability.

The SOR alleges a history of financial problems consisting of 20 items grouped together as follows: (1) ten medical collection accounts for a total of about \$6,451; (2) a mortgage loan with a past-due balance of \$2,266; (3) six student loan accounts in collection for a total of about \$21,111; and (4) three consumer collection accounts for a total of about \$2,494. The SOR allegations are established by Applicant's admissions and the documentary evidence.⁴

¹ Exhibit F.

² Exhibit 1.

³ Exhibit 5.

⁴ Exhibits 2, 3, 4, and 5.

Applicant explained the ten medical collection accounts should have been paid for by a state medical assistance program that she has been on-and-off since about 2004. She presented a document showing she was on the program from September 2014 to March 2016.⁵ The document is from the state medical assistance program and is seeking to have Applicant verify her eligibility. It does not indicate that any of the ten medical collection accounts were covered.

Applicant explained and presented documentation showing that the mortgage loan is no longer past due.⁶ The documentation shows she has made the required monthly payment since August 2016.

Applicant explained and provided documentation that her defaulted student loan accounts were rehabilitated and consolidated into two loan accounts.⁷ Based on hardship, she was allowed to pay \$5 monthly for 11 months and the loans were then considered rehabilitated.⁸ The documentation shows that seven student loan accounts, with disbursement dates of 2004-2005, were rehabilitated and consolidated. There are now two accounts with a current principal balance of \$23,866 and a total monthly payment of \$123.89. She stated that her payments on the loan accounts are current with no delinquencies, and she provided documentation showing that she made \$125 monthly loan payments from January 2016 through November 2016.⁹

Concerning the three collection accounts, Applicant presented documentation showing one account had been reduced to a judgment in October 2013, and it was satisfied in full via garnishment of her wages in May 2016.¹⁰ She explained that she allowed her wages to be garnished rather than making voluntary payments on the judgment because that was the simplest way to resolve the matter. She denied the \$127 collection account on the basis that she never had an account with the public library, the original creditor. She had no documentation for that account, nor did she have documentation for a \$407 collection account, which she claims was paid several years ago.

Applicant stated that both she and her husband have had health problems over the years that have adversely impacted their finances.¹¹ Her husband became unable to work for several years due to back problems and received disability compensation for part of that period. He's returned to work recently as a security guard for the same

⁵ Exhibit A.

⁶ Exhibit E.

⁷ Exhibit B.

⁸ Tr. 52-53.

⁹ Tr. 56; Exhibit D.

¹⁰ Exhibit C.

¹¹ Tr. 57-62.

company as Applicant. She estimated their 2016 gross income at about \$51,000. They spend about \$600 monthly, out-of-pocket, for prescription medicine for her husband.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.¹²

It is well-established law that no one has a right to a security clearance.¹³ 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.”¹⁴ 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.¹⁵ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁶

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁷ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁰

¹² The 2017 AG are available at <http://ogc.osd.mil/doha>.

¹³ *Department of the 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).

¹⁴ 484 U.S. at 531.

¹⁵ Directive, ¶ 3.2.

¹⁶ Directive, ¶ 3.2.

¹⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁸ Directive, Enclosure 3, ¶ E3.1.14.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ Directive, Enclosure 3, ¶ E3.1.15.

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.²¹ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²²

Discussion

Under Guideline F for financial considerations, 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 an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.²³

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive 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(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 here supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. With that said, it is evident the financial problems were made more difficult to resolve due to health

²¹ *Egan*, 484 U.S. at 531.

²² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²³ AG ¶ 18.

problems and the resulting loss of income. It is also evident that Applicant is doing the best she can within her means to resolve her delinquent debts. To that end, she presented reliable documentation showing that the delinquent student loan accounts were rehabilitated and she has made the required monthly payment for several months. Likewise, her mortgage loan is no longer past due. She resolved one of collection accounts, which was reduced to judgment, via garnishment of her wages. The medical collection accounts and the two minor collection accounts remain unresolved at this point. Although she did not present a perfect case in mitigation, she presented sufficient evidence to establish that she is managing her financial affairs in a responsible fashion.

Under Guideline E for personal conduct, the concern is that “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special concern is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.”²⁴ A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

As for the falsification allegation under Guideline E, I am simply not persuaded that Applicant’s failure to disclose bills or debts turned over to a collection agency in the past seven years was deliberate. Applicant is not a highly sophisticated person and she had never before completed a security clearance application. Her claim that she did not understand Question 26 is credible.

Following *Egan* and the clearly consistent standard, I have no doubts or concerns 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 considered the whole-person concept. Accordingly, I conclude that she 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

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a-1.t:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

²⁴ AG ¶ 15.

Conclusion

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

Michael H. Leonard
Administrative Judge