



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-05647

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

01/10/2018

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke her eligibility for access to classified information. She did not present sufficient evidence to mitigate the security concern stemming from a long-standing history of financial problems, which includes bankruptcies, failure to timely file federal and state income tax returns, back taxes owed to the IRS, and delinquent accounts. 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 October 2, 2014. This document is commonly known as a security clearance application. Thereafter, on November 14, 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 guideline known as Guideline F for financial considerations based on a history of financial problems.

Applicant answered the SOR on December 12, 2016. She admitted the factual allegations except for the allegation in SOR ¶ 1.I, for which she submitted documentation showing it was no longer a valid debt because it was included in a 2005 bankruptcy case. She also requested a hearing before an administrative judge.

The case was assigned to me on February 7, 2017. The hearing took place as scheduled on April 25, 2017. Applicant appeared without counsel. Both Department Counsel and Applicant offered documentary exhibits, which were admitted as Exhibits 1-13 and A-E, respectively, with the exception of Exhibit 6, which was not admitted. The hearing transcript (Tr.) was received on May 4, 2017.

Findings of Fact

Applicant is a 54-year-old employee who is seeking to retain a security clearance previously granted to her. She works as a senior assembler for a federal contractor. She has worked for the same company or its predecessor in interest since 1982. She married in 1991, although she and her husband are now living separately. They have two adult children, one of whom, along with a minor child, lives with Applicant.

Applicant does not dispute that she has a long-standing history of financial problems.¹ The SOR alleged and Applicant admits the following matters: (1) a discharged Chapter 7 bankruptcy in 1997, a dismissed Chapter 13 bankruptcy in 2002, and a discharged Chapter 13 bankruptcy in 2005; (2) failure to timely file federal and state income tax returns for tax years 2011 through 2015; (3) approximately \$17,000 in back taxes owed to the IRS for tax years 2011 through 2013; and (4) several past-due, collection, or charged-off accounts. Most of these matters remain unresolved.

At the hearing, Applicant explained that the bankruptcy cases, which were filed jointly with her husband, were necessitated by expenses exceeding their income.² She acknowledged that she had yet to file her past-due federal and state tax returns, although she hoped to have the returns filed within the next 30 days, as she was in the process of hiring a firm to prepare the returns.³ She has had no contact with the IRS about the back taxes, and she agreed that she probably now owes more than \$20,000 in back taxes.⁴

Concerning the delinquent accounts in the SOR, Applicant provided documentation or other proof that she resolved or was in the process of resolving

¹ Tr. 38.

² Tr. 44.

³ Tr. 47-49, 51-52.

⁴ Tr. 49-50.

several accounts. First, she stated unequivocally that she paid in full the \$116 charged-off account alleged in SOR ¶ 1.h.⁵ Second, she received an offer to settle the delinquent account in SOR ¶ 1.g, but had not acted upon it.⁶ Third, the delinquent account in SOR ¶ 1.i was resolved in 2005 when it was included in the bankruptcy case.⁷ Fourth, the delinquent account, alleged twice in SOR ¶¶ 1.j and 1.n, is being resolved by \$40 monthly payments.⁸ Fifth, the delinquent account alleged in SOR ¶ 1.m is being resolved through payments.⁹ The remaining delinquent accounts are unresolved.

Applicant attributed her financial problems to marital troubles.¹⁰ Her husband fell ill due to depression after retiring from his job working for a municipality in 2013.¹¹ The result was Applicant provided intensive care to him from about October 2013 to February 2017. Currently, she did not know if she had a positive or negative monthly cash flow.¹² She described her financial situation as living paycheck to paycheck.¹³

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, 2017.¹⁴

It is well-established law that no one has a right to a security clearance.¹⁵ 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

⁵ Tr. 68.

⁶ Exhibit D.

⁷ Exhibit C.

⁸ Exhibit A.

⁹ Exhibit B.

¹⁰ Tr. 39-42.

¹¹ Exhibit E.

¹² Tr. 57-58.

¹³ Tr. 59.

¹⁴ The 2017 AG are available at <http://ogc.osd.mil/doha>.

¹⁵ *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).

side of denials.”¹⁶ 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. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁷ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁸

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁹ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁴

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. . .²⁵

¹⁶ 484 U.S. at 531.

¹⁷ 484 U.S. at 531.

¹⁸ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁹ Directive, ¶ 3.2.

²⁰ Directive, ¶ 3.2.

²¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²² Directive, Enclosure 3, ¶ E3.1.14.

²³ Directive, Enclosure 3, ¶ E3.1.15.

²⁴ Directive, Enclosure 3, ¶ E3.1.15.

²⁵ AG ¶ 18.

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 or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts;

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

AG ¶ 19(f) failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required;

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 identify theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. Her history of financial problems is long-standing, going back to at least the 1997 Chapter 7 bankruptcy case, which was followed by two additional bankruptcy cases. In addition, and most serious here, is her failure to meet her lawful tax obligations by filing returns and paying tax when due. She has yet to file state or federal income tax returns for tax years 2011 through 2015, and she owes at least \$17,000 (and probably much more due to penalties and interest) to the IRS for back taxes. She was still shopping for a firm to assist her with filing her returns, and she had not been in contact with the IRS concerning the back taxes.

Applicant's tax problem is unresolved and ongoing. The failure to timely file tax returns and pay tax when due bears close examination and is a matter of serious

concern to the federal government.²⁶ Both the failure to file and pay tax when due suggest that an applicant has a problem with complying with well-established governmental rules and regulations. Voluntary compliance with such rules and systems is essential for protecting classified or sensitive information. An applicant who has a history of not fulfilling their tax obligations, which is the case here, may be said not to have demonstrated the high degree of judgment and reliability required for access to classified or sensitive information.

Applicant presented reliable information that she resolved or is in the process of resolving several of the delinquent accounts. Nevertheless, her efforts are insufficient to overcome the serious concern raised by her failure to meet her tax obligations. She has taken little affirmative action to resolve her tax problem, which is a matter that weighs heavily in my decision. Indeed, she has made no arrangements with state or federal tax authorities to file past-due returns or pay back taxes.

Applicant's long-standing history of financial problems creates serious 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*. I also considered the whole-person concept. 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.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraphs 1.l, 1.m, 1.n:	For Applicant

²⁶ The General Accountability Office (GAO) expressed serious concern over the relationship between tax delinquents and clearance holders in its July 28, 2014 report, *Security Clearances: Tax Debts Owed by DOD Employees and Contractors*, <http://www.gao.gov/assets/670/665052.pdf>.

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