



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



In the matter of:)
)
-----) ISCR Case No. 17-01065
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

12/27/2017

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 did not present sufficient evidence to explain, extenuate, or mitigate the security concern stemming from her long-standing history of financial problems or difficulties. 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 February 5, 2016.¹ This document is commonly known as a security clearance application. Thereafter, on May 15, 2017, 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

¹ Exhibit 3.

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.

Applicant answered the SOR on May 26, 2017. She requested a decision based on the written record in lieu of a hearing. Her response consisted of (1) handwritten responses on a copy of the SOR in which she admitted 19 of the 23 factual allegations, and (2) a two-page memorandum. She did not submit any supporting documentation with her answer.

On June 29, 2017, 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 21, 2017. She did not reply within 30 days of receipt of the FORM. The case was assigned to me on December 22, 2017.

Findings of Fact

Applicant is a 48-year-old employee who requires a security clearance for her job as a senior consultant for a federal contractor. She has been so employed since October 2015. Her educational background includes a bachelor's degree awarded in 1991. She married in 2015, and she has one child, born in 1996, from a previous relationship.

Applicant's employment history, as reflected in her security clearance application, includes multiple periods of unemployment dating back to 2007.² After losing a job due to downsizing and closure of the company in 2010, she moved in 2011 from the West Coast to the East Coast where she currently resides. She lived with family for more than two years before obtaining a rental property in 2013. After her relocation, her employment history was uneven and included periods of unemployment until she obtained her current job in 2015.

The SOR alleges a history of financial problems or difficulties consisting of 23 delinquent debts for a total of approximately \$22,000. Fifteen of the 23 delinquent debts are medical collection accounts for a total of about \$11,038. The delinquent accounts are established by a combination of Applicant's admissions in her answer to the SOR, and credit reports from March 2017 and February 2016.³ There is no documentation in the written record to establish that any of the delinquent accounts were paid, settled or compromised, in a payment arrangement, disputed, cancelled, forgiven, or otherwise resolved.

² Exhibit 3.

³ Exhibits 4 and 5, respectively.

In her May 2017 answer to the SOR, Applicant explained the following about her history of financial problems:

- She denied the allegations in SOR ¶¶ 1.c and 1.g, and she claimed that the allegations in SOR ¶¶ 1.h and 1.k are duplicative.
- She attributed her delinquent financial accounts to unemployment and underemployment.
- She attributed the medical collection accounts to uninsured medical expenses due to a miscarriage in 2015.
- She obtained her current job after being outside of her profession for five and a half years.
- Since returning to regular, full-time employment in 2015, she has not reached a point where she has sufficient funds to repay her delinquent debts, because her focus has been on meeting her current housing and living expenses.

As Applicant did not reply to the FORM, she likewise did not take advantage of the opportunity to submit documentation in extenuation, mitigation, or explanation, as appropriate, in support of her case.

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, 2017.⁴

It is well-established law that no one has a right to a security clearance.⁵ 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.”⁶ 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.⁷ The Appeal Board has

⁴ The 2017 AG are available at <http://ogc.osd.mil/doha>.

⁵ *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).

⁶ 484 U.S. at 531.

⁷ 484 U.S. at 531.

followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.⁸

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁹ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁴

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.¹⁵

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.

⁸ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁹ Directive, ¶ 3.2.

¹⁰ Directive, ¶ 3.2.

¹¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹² Directive, Enclosure 3, ¶ E3.1.14.

¹³ Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ AG ¶ 18.

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 ¶ 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 a problematic financial history sufficient to raise a security concern under Guideline F. There is no evidence that Applicant has made any progress in resolving the delinquent debts. Her problematic financial history suggests she may be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

With that said, I have given little weight to the 15 unresolved medical collection accounts that Applicant incurred due to uninsured medical expenses. Medical debt is unlike other types of debt. First, it is presumed that medical debt is incurred for necessary medical care and treatment as opposed to frivolous or irresponsible spending or otherwise living beyond one's means. Second, medical debt is usually unplanned, unexpected, and nondiscretionary. Third, it can add hundreds if not thousands of dollars in debt in a short period, which can overwhelm a debtor. Accordingly, the allegations involving the 15 medical collection accounts are decided for Applicant.

What is missing here is documentation in support of Applicant's case. There is no documentation to establish that she has initiated and is adhering to a good-faith effort to repay her other delinquent debts. Although her financial problems are connected to her periods of unemployment and underemployment that preceded her current job, I cannot conclude that she has acted responsibly under the circumstances given the state of the written record. Moreover, given that she requested a decision based on the written hearing in lieu of a hearing, the lack of documentation undermines her case. It's the responsibility of the individual applicant to produce relevant documentation in support of their case. Here, Applicant has not met her burden of production because she did not present sufficient documentation showing that she is making some sort of a good-faith effort to resolve the other delinquent debts.

Applicant's history of financial problems or difficulties 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*. 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.d-1.f, 1.j, 1.l, 1.n-1.s, and 1.u-1.w:	For Applicant
Subparagraphs 1.b, 1.c, 1.g-1.i, 1.k, 1.m, and 1.t	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