



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



In the matter of:)
)
-----) ISCR Case No. 17-01891
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

03/09/2018

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for access to classified information. Applicant failed to mitigate the security concern raised by her problematic financial history. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions (SF 86 format) on July 13, 2016. This document is commonly known as a security clearance application. On June 7, 2017, 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 her eligibility for access to classified information.¹ It detailed the factual reasons for the action under the security guideline

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),

known as Guideline F for financial considerations. Applicant answered the SOR on July 5, 2017, and requested a decision based on the written record without a hearing.

On July 31, 2017, Department Counsel submitted a file of relevant material (FORM).² The FORM was mailed to Applicant on August 1, 2017. She was given 30 days to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant received the FORM on August 16, 2017. Applicant responded to the FORM on September 12, 2017, and submitted a ten-page document, that I have marked as Applicant's Exhibit (AE) A and which is admitted into evidence without objection. The case was assigned to me on December 18, 2017.

Procedural Matters

Included in the FORM were five items of evidence, which are marked as Government Exhibits (GE) 1 through 5. GE 1 through 3 and GE 5 are admitted into evidence without objection. GE 4 is a report of investigation (ROI) summarizing Applicant's interviews that took place in December 2016 during the background investigation. The ROI is not authenticated, as required under ¶ E3.1.20 of the Directive.³ 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 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, it is fair to conclude that Applicant read the footnote, understood it, and chose not to object to the ROI. The ROI (GE 4) is, therefore, admitted into evidence.⁴

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, the latter of which are identified as evidentiary exhibits in this decision.

³ 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.).

⁴ This is consistent with recent Appeal Board decisions. ISCR Case No. 16-03126 at 2 (Jan. 24, 2018) (ROI admitted where applicant's response to the FORM failed to object to the ROI or indicate that it was inaccurate); ISCR Case No. 15-05047 at 4 (Nov. 8, 2017) (ROI admitted where applicant failed to object to the ROI in his response to the FORM).

Findings of Fact

Applicant is 33 years old, never married, and has no children. She is a high school graduate who earned a technical diploma after high school. Applicant served several months on active duty with the U.S. Air Force but was discharged for medical reasons. Since June 2016, she has worked for a defense contractor. Applicant had numerous periods of unemployment before taking her current job. The most recent such periods were from March 2014 to October 2014; January 2015 to July 2015; and January 2016 to June 2016. During her unemployment in 2015, her auto was repossessed, which is one of the SOR debts.⁵

Under Guideline F, the SOR alleged that Applicant has 11 delinquencies totaling \$16,992.⁶ Applicant admitted all but two of the SOR debts.⁷ The SOR debts persist to this day.⁸ For her admitted debts, Applicant states that they have been paid in full, are currently being paid, have been settled, or have been enrolled in a debt relief program. She provided documentation of which of the debts have been so enrolled (SOR ¶¶ 1.a, 1.b, and 1.f).⁹ Applicant did not, however, provide documents showing her periodic payments under the debt relief program. Nor did Applicant provide documentation showing the resolution of non-enrolled debts. She did, however, provide documents showing the payment of two of her medical debts (SOR ¶¶ 1.h and 1.j).¹⁰

Law and Policies

It is well-established law that no one has a right to a security clearance.¹¹ 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.”¹² 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.

⁵ GE 3 and GE 4. SOR ¶ 1.a.

⁶ SOR ¶¶ 1.a-1.k.

⁷ Answer. Applicant denied SOR ¶¶ 1.c and 1.k. There is record support, however, for those two denied debts. GE 5.

⁸ GE 5.

⁹ Answer; AE A, p. 7.

¹⁰ AE A, p. 8-10.

¹¹ *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).

¹² 484 U.S. at 531

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹³ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁵ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁶ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁷ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁸

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁹ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁰

Discussion

Under Guideline F for financial considerations,²¹ 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....²²

¹³ Directive, ¶ 3.2.

¹⁴ Directive, ¶ 3.2.

¹⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁶ Directive, Enclosure 3, ¶ E3.1.14.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ *Egan*, 484 U.S. at 531.

²⁰ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²¹ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²² 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 conditions:

AG ¶ 19(a) inability to satisfy debts; and

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

In analyzing the facts of this case, I considered the following mitigating conditions:

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. Security concerns are raised under AG ¶¶ 19(a) and (c). The next inquiry is whether any mitigating conditions apply.

Applicant's debts remain currently delinquent, so her financial problems are ongoing. Therefore, AG ¶ 20(a) does not apply.

Applicant attributes her delinquencies to her loss of employment. Crediting that explanation triggers the first prong of AG ¶ 20(b), which applies to circumstances largely beyond Applicant's control. That does not, however, end the analysis. Applicant must also establish that she acted responsibly under those adverse circumstances. Applicant claims that the SOR delinquencies are either current, have been paid, or are being paid. Unfortunately, she has not provided documentation sufficient to support her claims. The Appeal Board has previously noted that it is reasonable for a Judge to expect applicants

to present documentation about the satisfaction of individual debts.²³ AG ¶ 20(b) does not apply. For the same reason, AG ¶ 20(d) does not apply.

The record raises 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 failed to 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

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:	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

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.

Philip J. Katauskas
Administrative Judge

²³ See, e.g., ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008); ISCR Case No. 06-17520 at 2 (App. Bd. Sep. 20, 2007).

²⁴ AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6).

