



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-00657

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel

For Applicant: *Pro se*

09/14/2018

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for access to classified information. She did not present sufficient evidence to explain, extenuate, or mitigate the security concern stemming from her history of financial problems or difficulties, which are ongoing. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, on October 14, 2015.¹ It is commonly known as a security clearance application or simply SF 86. Thereafter, on March 23, 2018, 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

¹ Exhibit 3.

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.

Applicant answered the SOR on April 27, 2018. Her answers were mixed with both admissions and denials. She requested a decision based on the written record in lieu of a hearing.

On May 31, 2018, 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 on June 18, 2018. She did not reply within 30 days of receipt of the FORM. The case was assigned to me on September 13, 2018.

Findings of Fact

Applicant is a 53-year-old employee who requires a security clearance for her job as a work-control administrator for a federal contractor. She has been so employed since September 2015. She has been married since 1997, and has no children. According to her security clearance application, she has been regularly but not continuously employed since at least 2001. She has worked for a series of federal contractors in jobs such as administrative support specialist, intelligence analyst, and desk officer. Her employment history since 2001 includes two periods of unemployment. First, she was laid off from a job and then unemployed from June 2011 to October 2013, a period of more than two years. Second, she was unemployed for about a year from October 2014 until beginning her current job in September 2015.

The SOR alleges a history of financial problems or difficulties consisting of the 11 delinquent accounts ranging in amounts from \$145 to \$16,879 for a total of about \$38,160. In her SF 86, Applicant disclosed three adverse financial matters as follows: (1) a mortgage loan that went into foreclosure mediation resulting in a modification of the loan; (2) a charged-off credit card account for \$3,000; and (3) a delinquent student loan account. The 11 delinquent accounts in the SOR consist of charged-off accounts, collection accounts, and an unpaid judgment. Court records show a judgment was awarded in favor of a collection agency and against Applicant for \$3,646 in September 2013, as alleged in SOR ¶ 1.j.² Court records also show that a lawsuit was brought by a credit union and against Applicant for \$16,879 in December 2017, and was pending as of February 2018.³ The latter matter was alleged as a charged-off account in SOR ¶ 1.a. In sum, the 11 delinquent accounts are established by Applicant's admissions in

² Exhibit 5.

³ Exhibit 4.

her answer to the SOR, credit reports from November 2015 and February 2018, and the court records mentioned above.⁴

Applicant did not submit any supporting documentation with her answer to the SOR. Nor did she take advantage of the opportunity to reply to the FORM by submitting documentation in rebuttal, extenuation, mitigation, or explanation, as appropriate, in support of her case. Given these circumstances, there is no documentation to establish that the 11 delinquent accounts were paid, settled or compromised, in a payment arrangement, disputed, cancelled, forgiven, or resolved by some other means.

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, 2017.⁵

It is well-established law that no one has a right to a security clearance.⁶ 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.”⁷ 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.⁸ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.⁹

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁰ An

⁴ Exhibits 4, 5, 6, and 7.

⁵ The 2017 AG are available at <http://ogc.osd.mil/doha>.

⁶ *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).

⁷ 484 U.S. at 531.

⁸ 484 U.S. at 531.

⁹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁰ Directive, ¶ 3.2.

unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹¹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹² The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹³ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁴ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁵

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. . .¹⁶

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:

AG ¶ 19(a) inability to satisfy debts;

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

¹¹ Directive, ¶ 3.2.

¹² ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹³ Directive, Enclosure 3, ¶ E3.1.14.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

¹⁶ AG ¶ 18.

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;

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(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. There is no reliable documentary evidence that Applicant has made forward progress in resolving the 11 delinquent accounts that altogether total more than \$38,000. Her problematic financial history suggests she may be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

With that said, Applicant's financial problems are probably directly related to her two periods of unemployment, one of which was for more than two years during 2011-2013. Nevertheless, what is missing here is documentation in support of her case. For example, there is no documentation to establish that she initiated and is adhering to a good-faith effort to pay or otherwise resolve her delinquent debts. Likewise, there is no documentation showing that she has the financial wherewithal to resolve the delinquent debts. And there is no documentation in support of the disputed debts she claimed in her answer to the SOR. At bottom, she has not met her burden of production because she did not present sufficient documentary evidence in support of her case.

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.k:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant access to classified information. Eligibility denied.

Michael H. Leonard
Administrative Judge