



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-01177

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel

For Applicant: *Pro se*

11/13/2018

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 completed and submitted a Questionnaire for National Security Positions (SF 86 format) on June 10, 2016. This document is commonly known as a security clearance application. On May 4, 2018, 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

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), effective within the Defense Department on June 8, 2017, apply here.

the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on June 4, 2018, and requested a decision based on the written record without a hearing.

On June 26, 2018, Department Counsel submitted a file of relevant material (FORM).² The FORM was mailed to Applicant on the same day. She was given thirty days to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant received the FORM on July 9, 2018. Applicant responded to the FORM on August 2, 2018. The case was assigned to me on October 11, 2018.

Procedural Matters

Applicant's response to the FORM included documents that I have marked as Applicant's Exhibit (AE) A and which is admitted into evidence without objection. Included in the FORM were eight items of evidence. Items 2 through 5 are marked as Government Exhibits (GE) 1 through 4 and are admitted into evidence without objection.³

Findings of Fact

Applicant is 65 years old and has an Associate's degree. She is divorced with three adult children. Since November 2004, she has worked for a defense contractor.⁴

Under Guideline F, the SOR alleges five delinquent debts totaling \$235,928, three of which are educational loans totaling \$180,280.⁵ Applicant admitted the first four of those SOR debts, adding that the educational loans were her daughter's, for which Applicant had co-signed. Applicant also explained that her daughter successfully completed her degree but was unable to pay the loans herself because of unexpected health conditions and the difficulty in finding reliable employment in her field of study. Until recently, Applicant's daughter lived on disability; her health has improved, however, and she is now gainfully employed.⁶ Applicant denied the fifth SOR debt (for \$24,911) and said that she did not know about it.⁷ It is, however, supported by record evidence, and at her subject interview, Applicant identified it as another educational loan for her daughter in both of their names.⁸

² The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which documents are identified as evidentiary exhibits in this decision.

³ Item 1 is the SOR and Applicant's Answer. Those are the pleadings in this case and, therefore, they are not marked as exhibits.

⁴ GE 1.

⁵ SOR ¶ 1.

⁶ Answer ¶ 1, p. 3; GE 1; AE A, p. 2.

⁷ Answer ¶ 1.e.

⁸ GE 3, p. 7; GE 2, p. 11.

Applicant explained her efforts to address the student loans. Over the past years, Applicant has repeatedly contacted the loans' collection agencies and offered to make monthly payments she knew she could afford. Each time, her offers were rebuffed as being insufficient. At one point, one lender garnished \$25 per paycheck, which she could afford and did pay. That amount was approved by a judge, but after a few months the lender stopped the garnishment for reasons unknown to Applicant.⁹

In her response to the FORM, Applicant explained and documented that two of the first three alleged educational loans are being resolved by automatic monthly installments paid to the collection firm (not to the original lender) from her checking account, a plan that she started in December 2017 and was current through June 2018. Applicant also plans to add the third alleged educational loan to that payment plan, but she produced no documents evidencing any steps taken to advance that plan.¹⁰

Applicant produced no documents showing that SOR ¶¶ 1.d and 1.e have been paid or otherwise resolved. The SOR debts became delinquent in about early 2013 and remain delinquent today.¹¹

Law and Policies

It is well-established law that no one has a right to a security clearance.¹² 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."¹³ 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.¹⁴ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁵

⁹ Answer ¶ 1, pp. 2-3 (and attached wage garnishment orders).

¹⁰ AE A, p. 2 and Encl. 2. The first, second, and third educational loans are with the same collection firm. I could not determine from Applicant's documents which two of those three loans are being paid under the current installment arrangement.

¹¹ GE 3; GE 4. In her response to the FORM, although her own educational loan is not alleged in the SOR, Applicant documented that she paid off that loan in January 2017 (just over \$10,000). AE A, Encl. 1.

¹² *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).

¹³ 484 U.S. at 531.

¹⁴ Directive, ¶ 3.2.

¹⁵ Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.²⁰ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²¹

Discussion

Guideline F - Financial Considerations

Under Guideline F for financial considerations,²² the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness, 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.²³

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.

¹⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁷ Directive, ¶ E3.1.14.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ *Egan*, 484 U.S. at 531.

²¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²² AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²³ AG ¶ 18.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions or factors:

AG ¶ 19(a) inability to satisfy debts;

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

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.

Facts admitted by an applicant in an answer to a SOR require no further proof by the Government.²⁴ Applicant has admitted the debts alleged in SOR ¶¶ 1.a through 1.d, and SOR ¶ 1.e is supported by the record. The evidence supports a conclusion that Applicant has had a problematic financial history, as alleged. This raises security concerns under AG ¶¶ 19(a) and (c). The next inquiry is whether any potentially mitigating conditions apply.

Applicant attributes her financial difficulties to a combination of two conditions. First, her daughter experienced a medical disability before graduating from college. Second, that disability and a concomitant tightening of employment opportunities for her made it difficult for her to find reliable employment. The daughter is now, however, medically improved and gainfully employed. I find that the circumstances that caused Applicant's financial problems are unlikely to recur and that those circumstances were largely beyond Applicant's control. AG ¶¶ 20(a) and (b) potentially apply, subject to an inquiry into Applicant's current reliability and whether she acted responsibly in light of the adverse circumstances she faced.

First, in January 2017, Applicant paid in full her own education loan, a not insubstantial sum. Although that debt was not alleged in the SOR, I may consider her resolution of it in evaluating her case for mitigation and in my whole-person analysis.²⁵ I

²⁴ ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995) ("any admissions [applicant] made to the SOR allegations . . . relieve Department Counsel of its burden of proof"); ISCR Case No. 94-0569 at 4 and n.1 (App. Bd. Mar. 30, 1995) ("[a]n applicant's admissions, whether testimonial or written, can provide a legal basis for an Administrative Judge's findings").

²⁵ See, e.g., ISCR Case No. 14-01941 at 3 (App. Bd. Mar. 30, 2015).

considered that resolution favorably to Applicant. Second, she enrolled two of the three first-alleged SOR educational debts in a monthly payment plan and was current on that plan when the SOR was issued.²⁶ In all, this is responsible conduct by Applicant and shows her reliability as to those two debts. AG ¶¶ 20(a), (b), and (d) apply, and I find in favor of Applicant on SOR ¶¶ 1.a and 1.b.

Applicant has not provided sufficient evidence that the other SOR debts are being or have been resolved. Therefore, I find against Applicant on SOR ¶¶ 1.c, 1.d, and 1.e.

The evidence of Applicant's financial condition raises doubts 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 gave due consideration to the whole-person concept.²⁷ Accordingly, I conclude that Applicant has not 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

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | Against Applicant |
| Subparagraphs 1.a-1.b: | For Applicant |
| Subparagraph 1.c-1.e: | 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

²⁶ Not being able to ascertain which two of the three first-alleged SOR debts were included in the plan, I considered that SOR ¶¶ 1.a and 1.b are included in that plan.

²⁷ AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6).

