



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03667

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel

For Applicant: *Pro se*

06/08/2018

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 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 8, 2017.¹ This document is commonly known as a security clearance application. Thereafter, on November 2, 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 clearly consistent with the national interest to grant her eligibility for access to classified

¹ Exhibit 2.

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 November 25, 2017. She requested a decision based on the written record in lieu of a hearing.

On December 14, 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 on January 3, 2018. She made a timely reply to the FORM, which consists of a two-page handwritten memorandum. The case was assigned to me on June 6, 2018.

Findings of Fact

Applicant is a 32-year-old employee who requires a security clearance for a job with a federal contractor in the defense industry.² She is yet to begin that employment pending her application for a security clearance. She has otherwise been employed as a VIP reservationist for a casino since October 2016. Before that, she worked as a bookkeeper and officer manager from January 2009 to December 2015. She was laid off (and on maternity leave) and unemployed during January—September 2016, a period of about nine months. She received unemployment compensation until July 2016, but otherwise had no income until resuming employment in October 2016. Her educational background includes an associate's degree awarded in 2014. She has never married and she has lived with a cohabitant since 2014. She has one child, born in December 2015.

The SOR alleges a history of financial problems or difficulties consisting of 43 delinquent accounts grouped together as follows: (1) nine past-due student loans in various amounts; (2) four unpaid judgments for a total of about \$3,793; and (3) 30 collection or charged-off accounts for a total of about \$30,000. In her answer to the SOR, she admitted the delinquent debts except for six charged-off accounts, which she claimed duplicated other alleged debts. The 43 delinquent accounts are established by Applicant's admissions in her answer to the SOR, two credit reports from 2017, and court records concerning the four unpaid judgments.³

Applicant attributes her financial problems to her 2016 period of unemployment.⁴ She asserted in her answer to the SOR that the nine past-due student loans were in deferment, not past due, and she intended to consolidate the loans when the deferment ended. She submitted documentation of a settlement installment agreement for the

² Exhibit 10.

³ Exhibits 4-9.

⁴ Answer to SOR; Exhibit 3.

unpaid judgment in SOR ¶ 1.qq, but did not include documentation showing proof of payment under the settlement.⁵

In her February 2018 reply to the FORM, she made the following assertions: (1) she entered into a repayment arrangement with 12 creditors upon receipt of an income tax refund in February 2018; (2) six of the delinquent accounts are duplicates of other accounts; (3) the nine past-due student loans are current and she is working with the lender to consolidate the majority of the loans; (4) she contacted seven creditors to inform them of her situation and she will try to make some sort of payment every month; and (5) she has yet to contact nine creditors. She did not submit documentation to support her assertions. Likewise, she did not submit documentation (e.g., account statements, cancelled checks, bank statements, etc.) showing that any of the 43 delinquent debts in the SOR were paid, settled, in a repayment arrangement, forgiven, cancelled, or otherwise resolved.

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, 2017.⁶

It is well-established law that no one has a right to a security clearance.⁷ 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.”⁸ 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.⁹ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁰

⁵ Answer to SOR at 9-10.

⁶ The 2017 AG are available at <http://ogc.osd.mil/doha>.

⁷ *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).

⁸ 484 U.S. at 531.

⁹ 484 U.S. at 531.

¹⁰ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹¹ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹²

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹³ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁴ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁵ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁶

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. . . .¹⁷

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;

¹¹ Directive, ¶ 3.2.

¹² Directive, ¶ 3.2.

¹³ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁴ Directive, Enclosure 3, ¶ E3.1.14.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ AG ¶ 18.

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 reliable documentary evidence that Applicant has made any forward progress in resolving the 43 delinquent debts for more than \$30,000. Her problematic financial history suggests she may be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

What is missing here is documentation in support of Applicant's case. There is insufficient documentation to establish that she initiated and is adhering to a good-faith effort to pay the delinquent debts. Although her financial problems are connected to a period of unemployment in 2016, I cannot conclude that she has acted responsibly since then given the state of the written record. It's the responsibility of the individual applicant to produce relevant documentation in support of their case. For example, given her representations about her student loans, it is reasonable to expect Applicant to produce paperwork showing the accounts are no longer past due. She has not met her burden of production because she did not present sufficient documentation showing that she is making some sort of effort to resolve her numerous 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.qq	Against Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge