



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



In the matter of: )  
 )  
 ----- ) ISCR Case No. 18-00083  
 )  
 Applicant for Security Clearance )

**Appearances**

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

08/02/2018

**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 20, 2016. This document is commonly known as a security clearance application. On January 29, 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.<sup>1</sup> It detailed the factual reasons for

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<sup>1</sup> 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),

the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on March 22, 2018, and requested a decision based on the written record without a hearing.

On April 9, 2018, Department Counsel submitted a file of relevant material (FORM).<sup>2</sup> The FORM was mailed to Applicant on April 11, 2018. 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 April 19, 2018. Applicant did not respond to the FORM. The case was assigned to me on July 26, 2018.

### **Procedural Matters**

Included in the FORM were seven items of evidence. Items 1 and 2 are the SOR and Applicant's Answer, respectively. As these are the pleadings, they are not marked as exhibits. Items 3 through 7 are marked as Government Exhibits (GE) 1 through 5. GE 1 and 3 through 5 are admitted without objection.

GE 2 is a report of investigation (ROI) summarizing Applicant's interviews that took place in June 2017 during the background investigation. The ROI is not authenticated, as required under ¶ E3.1.20 of the Directive.<sup>3</sup> 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. Nevertheless, I am not persuaded that a *pro se* applicant's failure to respond to the FORM, which response is optional, equates to a knowing and voluntary waiver of the authentication requirement. The record does not demonstrate that Applicant understood the concepts of authentication, waiver, and admissibility. It also does not demonstrate that he understood the implications of waiving an objection to the admissibility of the ROI. Accordingly, Exhibit 2 is inadmissible, and I have not considered the information in the ROI.

### **Findings of Fact**

Applicant is 33 years old. She resides in a home that she has owned since November 2015. Before that Applicant lived in family homes from 1984 until November

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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).

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

<sup>3</sup> 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.).

2015. She has been employed by defense contractors since January 2015. She has never been married and has no children. Applicant obtained an associate's degree in February 2011. Applicant served in the U.S. Air Force starting in December 2006 as a reservist alternating between full and part-time active reserve, until she stopped drilling in August 2015.<sup>4</sup>

The SOR alleges five delinquent debts totaling \$29,598. The SOR also alleges that Applicant filed a Chapter 13 bankruptcy in November 2016 that was dismissed December 2016.<sup>5</sup> Applicant admitted all of those allegations with some qualifications. She claims that some debts have been or will be resolved. Applicant claims that SOR ¶ 1.d is in forbearance.<sup>6</sup> She has not, however, submitted any documents showing the current status or the resolution of the SOR debts. Applicant's delinquencies are continuing.<sup>7</sup>

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>8</sup> 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."<sup>9</sup> 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.<sup>10</sup> An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>11</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>12</sup> The Government has the burden of presenting

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<sup>4</sup> GE 1.

<sup>5</sup> SOR ¶ 1.

<sup>6</sup> Answer ¶ 1.

<sup>7</sup> GE 3; GE 4.

<sup>8</sup> *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 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>9</sup> 484 U.S. at 531

<sup>10</sup> Directive, ¶ 3.2.

<sup>11</sup> Directive, ¶ 3.2.

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

evidence to establish facts alleged in the SOR that have been controverted.<sup>13</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>14</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>15</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>16</sup> The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>17</sup>

## Discussion

Under Guideline F for financial considerations,<sup>18</sup> 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 . . . .<sup>19</sup>

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;

AG ¶ 19(b) unwillingness to satisfy debts regardless of the ability to do so;  
and

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<sup>13</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>14</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>15</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>16</sup> *Egan*, 484 U.S. at 531.

<sup>17</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>18</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>19</sup> AG ¶ 18.

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 and those financial problems continue to this day. Security concerns are raised under AG ¶¶ 19(a), (b), and (c). The next inquiry is whether any mitigating conditions apply.

Although Applicant's debts became delinquent a couple of years ago, they remain in default and unresolved to this day. AG ¶ 20(a) does not apply.

The Appeal Board has previously noted that it is reasonable for an administrative judge to expect applicants to present documentation about the satisfaction or other resolution of individual debts.<sup>20</sup> Applicant has not done so. Nor does the record establish any grounds for potentially applicable mitigating conditions to apply. Accordingly, AG ¶¶ 20(b) and (d) do 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.<sup>21</sup> 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.

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<sup>20</sup> 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).

<sup>21</sup> AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6).

### **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.f:                      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