



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



In the matter of:)	
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)	ISCR Case No. 14-04955
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank Jr., Esq., Department Counsel
For Applicant: *Pro se*

10/21/2015

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her a security clearance to work in the defense industry. She has a history of financial problems or difficulties consisting of more than \$27,000 in collection or charged-off accounts, which are ongoing and unresolved. She did not present sufficient evidence to rebut, extenuate, mitigate, or explain 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 March 18, 2014.¹ After reviewing the application and information gathered during a background investigation, the Department of Defense

¹ Exhibit 1 (this document is commonly known as a security clearance application).

(DOD),² on February 7, 2015, 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.³ The SOR is similar to a complaint. It detailed the reasons for the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR in a March 8, 2015 four-page memorandum.

The case was assigned to me on May 1, 2015. The hearing was held as scheduled on June 2, 2015. Department Counsel offered Exhibits 1–5, and they were admitted. Applicant did not offer any documentary exhibits, and she did not call any witnesses other than herself. The hearing transcript (Tr.) was received on June 9, 2015.

Findings of Fact

Applicant is a 33-year-old employee who is seeking to obtain a security clearance for the first time. She is employed as a part-time, on-call engineer technician for a federal contractor. She has worked for the same company since 2010, although never in a full-time capacity. Her security clearance application shows she was unemployed during 2009–2010, during 2008–2009, and in 2008. It also reflects multiple residences (15) from 2004 to present.

Applicant's first marriage ended in divorce, and she married her current husband in 2008. She has three sons, all of whom are residing in her household. She also has two stepdaughters, one adult and one teenager, from her husband's previous marriage.

Applicant has a history of financial problems or difficulties, which she does not dispute. The SOR allegations consist of 18 collection or charged-off accounts ranging in amounts from a low of \$25 to a high of \$18,602 for a total of about \$27,539. In her answer to the SOR, Applicant admitted the delinquent accounts except for five accounts, four of which she disputed and one in which she stated she was an authorized user but not the account holder. Her problematic financial history is documented and established by credit reports from 2015 and 2014.⁴ At the hearing, she admitted that the accounts remained unpaid and that nothing had changed since she

² The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

³ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated 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 September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

⁴ Exhibits 2–4.

submitted her answer to the SOR.⁵ Likewise, she did not provide any documentation showing that the delinquent accounts are paid, settled, in repayment, forgiven, cancelled, in dispute, or otherwise resolved. The last time she had contact with any of the creditors was in the 2010–2011 period, after she began her current employment.⁶

Applicant attributed her problematic financial history to several circumstances. First, she pointed to her history of unemployment during 2008–2010 noted above, her underemployment as a part-time, on-call employee since 2010 that made her income unpredictable, and her husband’s unemployment since about November 2014.⁷ Second, she and her husband have been involved in a long-standing custody dispute to obtain custody of her youngest stepdaughter, which resulted in approximately \$4,000 in attorney’s fees and costs.⁸ Third, she is owed approximately \$23,000 in child support from the father of her oldest son.⁹

Applicant stated that she and her husband have no money in the bank, and she described their current financial situation as “just getting by.”¹⁰ She further stated that her plan to resolve the delinquent accounts consists of making payment arrangements, starting with the smallest debt and then moving on to the next debt.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 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.

⁵ Tr. 28–29.

⁶ Tr. 45.

⁷ Tr. 30–32.

⁸ Tr. 55–62.

⁹ Tr. 52–55.

¹⁰ Tr. 33–34.

¹¹ Tr. 32–33, 55.

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.

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 decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁵

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 the evidence.²⁰ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²¹

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.²² Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

¹⁴ Directive, ¶ 3.2.

¹⁵ Directive, ¶ 3.2.

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

¹⁷ Directive, Enclosure 3, ¶ 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 Executive Order 10865, § 7.

Discussion

Under Guideline F for financial considerations,²³ 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.²⁴ 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 information.²⁵

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.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. Taken together, the evidence indicates inability or unwillingness to satisfy debts²⁶ and a history of not meeting financial obligations²⁷ within the meaning of Guideline F.

In mitigation, I have considered six mitigating conditions under Guideline F,²⁸ and I have especially considered the following as most pertinent:

AG ¶ 20(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or death, divorce, or separation), and the [person] acted responsibly under the circumstances.

²³ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²⁴ ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

²⁵ AG ¶ 18.

²⁶ AG ¶ 19(a).

²⁷ AG ¶ 19(c).

²⁸ AG ¶ 20(a)–(f).

Applicant's problematic financial history is likely related to her uneven employment history, her husband's unemployment, the costs incurred for the custody dispute, and the lack of child-support payments for her oldest son. Nevertheless, the available evidence does not show that Applicant has acted responsibly under the circumstances. She has done little, if anything, to address the delinquent accounts in the SOR. Likewise, she has provided no documentation showing progress in addressing those matters. At this point, the delinquent debts in the SOR are considered to be wholly unresolved.

Of course, the purpose of this case is not aimed at collecting debts.²⁹ Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.³⁰

Here, the evidence does not support a conclusion that Applicant has established a plan and taken steps to implement that plan sufficient to mitigate the concern. In other words, there is no track record of progress showing a favorable upward trend. Instead, the available evidence shows that Applicant's problematic financial history is ongoing with no sign of abatement.

Given those circumstances, Applicant's history of financial problems 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*

²⁹ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

³⁰ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

