



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



In the matter of:)
)
-----) ISCR Case No. 14-05147
)
Applicant for Security Clearance)

Appearances

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

10/27/2015

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke an existing security clearance to work in the defense industry. She has a history of financial problems consisting of delinquent student loans, which have since been through a period of forbearance and are now being paid. She presented sufficient evidence to explain and mitigate her problematic financial history. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on May 9, 2013.¹ 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 December 24, 2014, 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 on January 21, 2015, and requested a hearing.

The case was assigned to me on May 1, 2015. The hearing was held as scheduled on June 3, 2015. Department Counsel offered Exhibits 1–6, and they were admitted. Applicant offered Exhibit A, and it was admitted. She did not call any witnesses other than herself. The hearing transcript (Tr.) was received on June 11, 2015.

The record was kept open to provide Applicant an opportunity to submit additional documentation concerning the student loan accounts. On June 8, 2015, she made a timely submission, and those documents are admitted, without objections, as Exhibits B–F.

Findings of Fact

Applicant is a 40-year-old employee who is seeking to retain a security clearance previously granted to her. She is employed as a software engineer for a major defense contractor and industrial corporation. She is currently leading a small group of software engineers who are working on a project to upgrade a weapons system. She has worked for the same company since 2000. Her educational background includes a bachelor of science degree awarded in 1999. She has lived at the same residence since 2002.

Applicant has a history of financial problems consisting of delinquent student loans, which she does not dispute. The SOR allegations consist of seven delinquent student loans for a total of about \$52,000. In her answer to the SOR, Applicant admitted the delinquencies. Her problematic financial history is also documented and established by credit reports from 2013–2015.⁴

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 2–5.

Applicant presented documentary evidence that the loans were no longer delinquent as of January 2015.⁵ In addition, the most recent credit report from March 2015 shows that the loans had past-due balances of \$0.00.

After receiving the SOR, Applicant contacted the student loan creditor, which in turn placed the loans in forbearance until April 28, 2015, with an initial payment due May 28, 2015. She made a timely payment of \$544.84 on June 1, 2015, and a recent account statement shows a current balance of \$55,023 for the seven student loans, which are in good standing with \$0.00 past due and \$0.00 in late fees.⁶ In addition to the most recent payment, the payment history (last five payments) consists of an \$850 payment on May 23, 2014, and \$428 payments on February 3, 2014, November 28, 2013, November 6, 2013, and September 28, 2013.⁷ Consistent with the 2013–2014 payment history, a July 2013 credit report shows five of the student loans were then in collection.⁸

Applicant attributed her delinquent student loans to incurring expenses for her son's education. Her son finished high school in 2013, and he is now a 20-year-old college student who is attending a small private college on an athletic scholarship. Her out-of-pocket college expenses for her son have been about \$2,000 to \$3,000 yearly, except for his freshman year (2013–2014), when she paid about \$13,000 for his first-year tuition and costs.⁹ Before college, she paid for her son to attend a private school for grades 6–12. She estimated the cost for grades 8–12 at about \$11,000 annually.¹⁰

Applicant believes she will be able to maintain the monthly payment on the student loans now that her son's educational expenses have decreased. She earns an annual salary in the \$80,000 range, is a homeowner with a current mortgage loan, and owns, outright, a small, inexpensive home in her home state that her family looks after. She has a 401(k) account with an estimated balance of about \$100,000, and she had on hand about \$2,500 in bank accounts.¹¹ Other than the delinquent student loans, the credit reports show that Applicant has been a responsible user of credit.

⁵ Exhibits A–E.

⁶ Exhibit F.

⁷ Exhibit A.

⁸ Exhibit 2.

⁹ Tr. 62–64.

¹⁰ Tr. 37–39.

¹¹ Tr. 54–56.

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.

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

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.

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).

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.

Discussion

In analyzing this case, I have paid special attention to Applicant's credibility. During the hearing, I had an opportunity to observe her demeanor and evaluate her sincerity, candor, and truthfulness. Applicant answered questions openly and without reservation or equivocation, and I found her testimony to be credible in all respects.

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

²² Executive Order 10865, § 7.

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.

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(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant defaulted on student loans when she diverted money to pay for her son's educational expenses. Although her motivation was understandable, it was not related to a circumstance beyond her control. She also broke her contractual agreement or promise to pay her student loan creditor. Nevertheless, she has since remedied the situation. Once she received the SOR in December 2014 and became fully cognizant of the Government's concern, she took prompt action to contact the student loan creditor. The loans were then placed in forbearance with an agreement to resume monthly payments, which she did on a timely basis. She also provided complete documentation of her interaction with the student loan creditor during January–June 2015, to include account statements and proof of her initial payment. Moreover, with the substantial decrease in her son's educational expenses, she has sufficient cash flow to adhere to the monthly payment schedule. For all these reasons, I conclude that Applicant mitigated the Guideline F security concern based on initiating a good-faith effort to repay her overdue student loans, and that there are clear indications that the problem is being resolved or is under control.

Applicant's history of financial problems no longer 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 gave due consideration to the whole-person concept.²⁹ Accordingly, I conclude that she 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.

²⁶ AG ¶ 19(a).

²⁷ AG ¶ 19(c).

²⁸ AG ¶ 20(a)–(f).

²⁹ AG ¶ 2(a)(1)–(9).

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a–1.g: For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge