



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



In the matter of:)	
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)	ISCR Case No. 14-03444
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

05/13/2015

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. Applicant has a history of financial problems or difficulties dating back to at least 2010, when she and her husband sought relief via a Chapter 13 bankruptcy case, which was dismissed in 2011 without confirmation of a payment plan. Excluding two minor medical collection accounts of no importance, she is now facing about \$22,599 in five unpaid collection accounts, and there has been no payment activity on those debts since about 2010. She did not meet her burden to present sufficient evidence to explain and mitigate the financial considerations security concern. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF86 Format) on March 15, 2013.¹ After reviewing the application and

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

information gathered during a background investigation, the DOD,² on October 8, 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. She answered the SOR on November 4, 2014, and requested a hearing.

The case was assigned to me on December 15, 2014. The hearing was held as scheduled on January 27, 2015. Department Counsel offered Exhibits 1–6, and they were admitted. Applicant offered no exhibits, but the record was kept open until February 10, 2015, to allow her to present documentary matters. Those matters were timely received, and they are admitted as Exhibits A–E. The hearing transcript (Tr.) was received on February 5, 2015.

Findings of Fact

Applicant is a 36-year-old software configuration management specialist. She is seeking to obtain a security clearance for the first time. She has worked for her current employer since February 2013. She has been continuously employed in a full-time capacity since January 2009.⁴ Before that, she had a six-month period of unemployment due to a job layoff during 2008, and she was on paid maternity leave for about four months in 2007 due to the birth of her twin sons.⁵ And before that, she had full-time employment going back to at least January 2001.⁶

Applicant married in 2003, had twin sons in 2007, separated in 2012, and anticipates a divorce in 2015. She is currently living with a boyfriend. She and her husband share custody of their sons without either parent paying child support.

The SOR alleges and there is substantial evidence to show that Applicant has a history of financial problems or difficulties consisting of five unpaid collection accounts

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 Exhibit 1; Tr. 66.

⁵ Exhibit 1; Tr. 62–66.

⁶ Exhibit 1.

for about \$22,599. That total excludes two medical collection accounts for \$226 and \$64 in SOR ¶¶ 1.e and 1.f, because they are so minor that they are of no importance here. The five unpaid collection accounts are established by Applicant's admissions and multiple credit reports.⁷ She did not present any documentation showing the five collection accounts were paid, settled, in repayment, disputed, cancelled, forgiven, or otherwise resolved.

Applicant admitted the SOR allegations concerning the 2010–2011 Chapter 13 bankruptcy case and the five unpaid collection accounts, and she provided the following explanation:

I do recognize that my current credit situation is not ideal. I admit that I have let old debts remain unresolved for too long, and I am working now to correct the situation. I have met with a credit repair specialist, and we will actively work to clean up the old debts and pay them off as quickly as possible.

Approximately eight years ago, shortly after my twins were born, I lost my job. We subsequently got behind on our mortgage and several bills. In an effort to "save" our home, my husband and I were advised to stop paying the credit card bills and try to file bankruptcy. Our bankruptcy was dismissed, as the value of the mortgage was too high. At this point, all of our bills were delinquent. We tried a few other avenues, but eventually lost our home [to foreclosure in 2012].

In the subsequent years, we also started the divorce process. I intended to file bankruptcy on my own, once the divorce was done, to clear up the old debts. It was my attempt to keep the divorce as amicable as possible and to not hit his finances. I am still waiting for him to finish filing the divorce papers.

I do not live beyond my means. I do not make poor financial judgment. I have learned dearly from poor choices in the past, and have let "being nice" get in the way of taking care of the old problems. I have now taken action and will resolve these old debts in the soonest and clearest way possible. It was a bad time. It is completely in my past.

I adore the work that I get to do for [my employer]. I love being part of the mission. I want to spend my career learning and growing within the department. Please be assured that I am resolving the old issues, and please allow me to continue the work that I love.⁸

⁷ Exhibits 2–6.

⁸ Answer to SOR.

At the hearing, Applicant confirmed the basic outline of the above explanation.⁹ She stated that she and her husband, who were then earning about \$170,000 annually, bought a home for \$1.2 million by making a \$300,000 down payment and financing the balance on a negative-amortization loan with the idea that they could refinance the loan in a few years, but that did not happen due to the downturn in the economy and real estate market.¹⁰ She further stated that the five unpaid collection accounts remain unresolved, and she would like to resolve them without resort to a Chapter 7 bankruptcy case.¹¹ She stated that there has been no payment activity or contact with the creditors since 2010.¹² She hired a credit repair specialist in November 2014, and that process has resulted in addressing several inaccurate and duplicate entries on her credit report, and her credit score has improved by 24 points.¹³

Also at the hearing, Applicant stated that she has about \$10,000 in a savings account, \$1,800 in a checking account, and \$20,000 in a 401(k) account.¹⁴ She stated she has a positive net remainder of about \$500 to \$600 per month, and that she does not feel pressed in meeting recurring monthly expenses.¹⁵

After the hearing, Applicant presented four letters of recommendation from people who attest to her reliability, trustworthiness, and loyalty as both a friend and an employee.¹⁶

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁷ 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

⁹ Tr. 26–28.

¹⁰ Tr. 31–35.

¹¹ Tr. 43–50.

¹² Tr. 37.

¹³ Exhibit A.

¹⁴ Tr. 41, 57–58.

¹⁵ Tr. 58–59.

¹⁶ Exhibits B–E.

¹⁷ *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).

side of denials.”¹⁸ 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.¹⁹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁴

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁵ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁶

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

¹⁸ 484 U.S. at 531.

¹⁹ Directive, ¶ 3.2.

²⁰ Directive, ¶ 3.2.

²¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²² Directive, Enclosure 3, ¶ E3.1.14.

²³ Directive, Enclosure 3, ¶ E3.1.15.

²⁴ Directive, Enclosure 3, ¶ E3.1.15.

²⁵ *Egan*, 484 U.S. at 531.

²⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

person a security clearance is not a determination of an applicant's loyalty.²⁷ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

Under Guideline F for financial considerations,²⁸ 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.²⁹ 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.³⁰

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 debts³¹ and a history of not meeting financial obligations³² within the meaning of Guideline F.

In mitigation, I have considered six mitigating conditions under Guideline F,³³ and I have especially considered the following as most pertinent:

²⁷ Executive Order 10865, § 7.

²⁸ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²⁹ 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).

³⁰ AG ¶ 18.

³¹ AG ¶ 19(a).

³² AG ¶ 19(c).

³³ AG ¶ 20(a)–(f).

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;

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 and is under control; and

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

Applicant has a history of financial problems or difficulties stemming from a combination of circumstances largely beyond her control. Those circumstances were job loss and unemployment, the downturn in the economy, and marital difficulties that resulted in separation in 2012 and the pending divorce. She acted somewhat responsibly under the circumstances by continuing to work and earn a living, by attempting to save their home (which proved futile because she and her husband were financially overextended), and, more recently, by obtaining the services of a credit repair specialist. Nevertheless, since 2010, Applicant has largely ignored five unpaid collection accounts totaling more than \$22,000, she has financial assets available to make payments, and she does not have a realistic plan in place to resolve those debts.

Of course, the purpose of this case is not aimed at collecting debts.³⁴ 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

³⁴ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.³⁵

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. Actions speak louder than words, and Applicant has taken few actions to resolve the five unpaid collection accounts.

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 versa*. I also gave due consideration to the whole-person concept.³⁶ 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 as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.d:	Against Applicant
Subparagraphs 1.e–1.f:	For Applicant
Subparagraphs 1.g–1.h:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility is denied.

Michael H. Leonard
Administrative Judge

³⁵ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

³⁶ AG ¶ 2(a)(1)–(9).