



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



In the matter of:	)	
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	)	ISCR Case No. 14-06463
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: *Pro se*

10/06/2015

**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 a past-due mortgage loan that is now in foreclosure, a defaulted student loan, two collection accounts, and multiple medical collection accounts. 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 May 20, 2014.<sup>1</sup> After reviewing the application and information gathered during a background investigation, the Department of Defense

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<sup>1</sup> Exhibit 3 (this document is commonly known as a security clearance application).

(DOD),<sup>2</sup> on January 14, 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.<sup>3</sup> 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 February 20, 2015 response wherein she admitted the SOR allegations and provided a one-page handwritten statement explaining her situation. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.<sup>4</sup>

On June 24, 2015, Department Counsel submitted all relevant and material information that could be adduced at a hearing.<sup>5</sup> This so-called file of relevant material (FORM) was mailed to Applicant, who received it on July 8, 2015. Applicant did not reply within 30 days from receipt of the FORM. The case was assigned to me on October 1, 2015.

### **Ruling on Evidence**

Exhibit 4 is a report of investigation (ROI) from the background investigation of Applicant. The document is a summary of an interview of Applicant conducted on July 15, 2014. An ROI may be received and considered as evidence when it is authenticated by a witness.<sup>6</sup> Here, Exhibit 4 is not authenticated in any way. Although Applicant, who is representing herself, has not raised the issue via an objection, I am raising it *sua sponte*. With that said, it is evident that Department Counsel is acting in good faith, having highlighted the issue in their brief.<sup>7</sup> Nevertheless, Applicant's lack of response to

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<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> Directive, Enclosure 3, ¶ E3.1.7.

<sup>5</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>6</sup> Directive, Enclosure 3, ¶ E3.1.20; see ISCR Case No. 11-13999 (App. Bd. Feb. 3, 2014) (the Appeal Board restated existing caselaw that a properly authenticated report of investigation is admissible).

<sup>7</sup> Department Counsel Brief at 2, n. 2.

the FORM does not amount to a knowing waiver of the right to object to the ROI.<sup>8</sup> Accordingly, Exhibit 4 is not admissible and I have not considered it.

### **Findings of Fact**

Applicant is a 58-year-old employee who is seeking to obtain a security clearance. She is employed as a quality-control inspector for a federal contractor. She has worked for the same company since 1984.

Applicant has a history of financial problems, which she does not dispute. Her problematic financial history is documented and established by credit reports from 2015 and 2014.<sup>9</sup> In completing her 2014 security clearance application, she disclosed the delinquent mortgage loan that was pending foreclosure, and she attributed the problem to her husband being laid off from his job. She provided a further explanation in her answer to the SOR as follows: (1) most of the delinquent accounts in the SOR are due to her husband's job loss; (2) the delinquent student loan is a loan she cosigned for a daughter some years ago and she stated her daughter is paying on it; and (3) she does not live beyond her means and she is trying to pay off the delinquent debts and improve her credit.

The SOR allegations consist of 14 delinquent debts for a total of \$34,049 as follows: (1) a past-due mortgage loan in the amount of \$25,460, with a balance of \$123,000, that is now in foreclosure; (2) a defaulted student loan for \$6,235; (3) 2 collection accounts for a total of \$406; and (4) 10 medical collection accounts for a total of \$1,949. In her answer to the SOR, Applicant admitted these matters, but she did not provide documentation showing that they are paid, settled, in repayment, forgiven, cancelled, in dispute, or otherwise resolved. To date, she has not submitted any documentation showing that the delinquent debts in the SOR are resolved or in the process of being resolved.

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>10</sup> 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

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<sup>8</sup> Waiver means "[t]he voluntary relinquishment or abandonment – express or implied – of a legal right or advantage; the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary*, 1717 (Bryan A. Garner ed., 9<sup>th</sup> ed., West 2009).

<sup>9</sup> Exhibits 5 and 6.

<sup>10</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).

side of denials.”<sup>11</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>12</sup> An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>13</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>14</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>15</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>16</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>17</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>18</sup> The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.<sup>19</sup>

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.<sup>20</sup> Instead, it

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<sup>11</sup> 484 U.S. at 531.

<sup>12</sup> Directive, ¶ 3.2.

<sup>13</sup> Directive, ¶ 3.2.

<sup>14</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>15</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>16</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>17</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>18</sup> *Egan*, 484 U.S. at 531.

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

<sup>20</sup> Executive Order 10865, § 7.

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,<sup>21</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.<sup>22</sup> 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.<sup>23</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.

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 debts<sup>24</sup> and a history of not meeting financial obligations<sup>25</sup> within the meaning of Guideline F.

In mitigation, I have considered six mitigating conditions under Guideline F,<sup>26</sup> 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

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<sup>21</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>22</sup> 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).

<sup>23</sup> AG ¶ 18.

<sup>24</sup> AG ¶ 19(a).

<sup>25</sup> AG ¶ 19(c).

<sup>26</sup> AG ¶ 20(a)–(f).

downturn, unexpected medical emergency, or death, divorce, or separation), and the [person] acted responsibly under the circumstances.

Applicant's problematic financial history is likely related to her husband's job loss and the medical issues that generated the numerous medical collection accounts. Moreover, it is presumed that the medical expenses were incurred for necessary medical care as opposed to frivolous or irresponsible spending. Nevertheless, the available evidence does not show that Applicant has acted responsibly under the circumstances. She has done little, if anything, to address the 14 delinquent accounts in the SOR. Likewise, she has provided no documentation showing progress in addressing those matters or even a basic plan or outline to resolve those matters. At this point, the 14 delinquent debts in the SOR are considered to be wholly unresolved.

Of course, the purpose of this case is not aimed at collecting debts.<sup>27</sup> 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.<sup>28</sup>

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. Indeed, the available evidences shows that Applicant's problematic financial history is recent and ongoing with no sign of abatement.

Because Applicant chose to have her case decided without a hearing, I am unable to evaluate her demeanor. Limited to the written record, I am unable to assess her sincerity, candor, or truthfulness. She also chose not to respond to the FORM with

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<sup>27</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

<sup>28</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

relevant and material facts about her circumstances, which may have helped to explain, extenuate, or mitigate the security concern.

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.<sup>29</sup> 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.n:	Against Applicant

### **Conclusion**

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

Michael H. Leonard  
Administrative Judge

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<sup>29</sup> AG ¶ 2(a)(1)–(9).