



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-01077

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel

For Applicant: *Pro Se*

September 26, 2008

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted a Security Clearance Application (e-QIP), signed September 21, 2007. On February 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct).¹ The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On April 24, 2008, Applicant requested a hearing on the matter. In response to the SOR, Applicant admitted the allegations regarding criminal conduct, denied the

¹ Due to poor copy quality, Department Counsel offered a logical interpretation discerning the date of the SOR. Transcript at 5-6.

allegations regarding financial concerns, and did not provide an answer regarding personal conduct. Applicant's request for a hearing was received on May 22, 2008, and I was assigned the case on May 28, 2008. Applicant and Department Counsel proposed a hearing date of July 1, 2008. A notice of hearing was issued on June 13, 2008, setting the hearing for that date. Due to a scheduling conflict, a notice was issued on July 2, 2008, setting the hearing for July 10, 2008.

The hearing was convened as scheduled. The Government offered six exhibits, which were accepted into the record as exhibits (Exs.) 1-6 without objection. Applicant represented herself and gave testimony; no witnesses were called. She offered seven exhibits, which were accepted into the record without objection as Exs. A-G. The record was held open through July 28, 2008, to afford Applicant the opportunity to supplement the record. A 20 page facsimile transmission was received on July 18, 2008, from Applicant. It consisted of a cover letter and select pages from her credit report. On July 22, 2008, the Government submitted a letter in which it declined to object to Applicant's submission. The submission was accepted into the record as Ex. H. In the interim, the transcript (Tr.) was received on July 18, 2008. The record was closed on July 30, 2008.

Findings of Fact

Applicant is a 50-year-old senior financial assistant working for a defense contractor. She has worked for the same contractor for the past three years. Applicant is married and has two adult children from a prior marriage. She has completed approximately two and one-half years of college.

From 1976 through 2000, Applicant worked for the Federal government and maintained a security clearance. During this same time period, Applicant's first marriage soured. She divorced her first husband in 1985, but she neglected to remove his name from her bank account. On three occasions between November 1987 and April 1989, Applicant wrote checks on her account which were returned for insufficient funds. This was the result of her ex-husband withdrawing funds from her account without her knowledge, thus reducing her available balance. Consequently, she was thrice arrested, charged, and convicted of passing a bad check. When Applicant's ex-husband later went to court for committing domestic violence, the bank corroborated that it was Applicant's husband's withdrawals that reduced Applicant's bank balances sufficiently to cause the three checks to be returned.

In 2000, Applicant moved to a new state. The move was costly and money was tight. In submitting her reimbursements to the Government for the balance owed on her lease, she inflated the balance she said she owed her apartment complex. Additionally, the receipts offered the Government for housing reimbursement in her new state of residence were higher than the actual costs she expended. As a result, Applicant was charged and convicted of Filing a False Claim and Theft of Government Property. Approximately \$15,000 in restitution was sought by the Government. Applicant pled guilty. In August 2000, she was sentenced to 30 days of incarceration, five years of supervised probation, and ordered to make restitution.

At the suggestion of her attorney, Applicant resigned her government position the week before her sentence was passed.² Applicant's supervisor did not want her to resign. When it was clear that was Applicant's intent, the supervisor referred Applicant to a particular government contractor in the private sector. Thus referred, that employer hired Applicant within two weeks after she left government service.³ For the most part, she has worked for various government contractors on different projects off and on since that time.

When it came time to serve her 30 days, Applicant had not heard from the corrections department. Her entry date apparently had been miscalculated. She helped facilitate her immediate processing because she wanted to fulfill her sentence expeditiously and get her life back on track.⁴ To that end, she took a "proactive approach to mending and straightening [her] life out."⁵ She served her term in prison in October 2000 without incident. After her release, she helped facilitate her own timely transition into a work release program.⁶ Restitution was aggressively and regularly made in larger than necessary amounts. She struggled to make larger payments to expedite the repayment of the amount owed the court. The full amount was repaid early, with payments completed before or by April 2005. Her period of supervised probation was promptly terminated in August 2005 with all requirements timely completed.⁷

During Applicant's incarceration, a \$126.00 bill from her cable company went unpaid. The account became delinquent, but was ultimately discovered and paid off by Applicant in 2004.⁸ The following year, in March 2005, Applicant similarly paid off the full balance owed on a delinquent credit card with a balance of \$7,350.00.⁹

Applicant remarried in 2006. Her husband's salary was used, in part, to pay their monthly mortgage. Between February and June of 2007, Applicant's husband was out of work due to an on-the-job injury. Following his accident, it took several months for his Worker's Compensation payments to be processed and paid. As a consequence, they became delinquent on their mortgage. Showing the mortgage company that Worker's Compensation would be forthcoming, however, their lender worked with them and

² Tr. 45-46.

³ Tr. 45; 48.

⁴ Tr. 26-27.

⁵ Tr. 27.

⁶ "They forgot that I was supposed to go on a work release." *Id.*

⁷ Ex. H (Probation letter, dated July 18, 2008) at 3.

⁸ Tr. 18-19; Ex. H, *supra*, at 4.

⁹ Attachment to the SOR Answer, Bank letter, dated March 14, 2005.

helped them refinance the loan. The account was brought up to date in October 2007. Today, the payments are up to date. There is no past due amount owed to the mortgagor.¹⁰

Applicant regrets what she did in the past, looks at her past legal transgressions as a “life lesson,” and is committed to moving forward in the future and not let such things happen again.¹¹ She has made a conscious effort to turn her life around and to demonstrate that openly.¹² As a result, over the past eight years, she has made substantial changes in the manner she conducts her affairs. Although her ex-husband is no longer on her bank account, she does not write a check unless she is sure there is more than sufficient funds to cover it and any other outstanding withdrawals.¹³ She has learned the importance of working with creditors and living within one’s means.¹⁴ She received financial counseling, is currently living within her means, and is saving money for the future.

Now active with a local church, Applicant became an integral part of its outreach program following her incarceration. That program gives counseling to those in trouble and those who are in debt, teaching them that they need not resort to crime to make it.¹⁵ Instead, they emphasize job training, She openly shares her story with, and offers her insights to, participants and youth groups.¹⁶ Through this church group, in 2003, she met her current husband. Together, they started their own partnership with a national charitable organization through their church.¹⁷ The partnership has been hugely successful, owing in great part to Applicant’s leadership and efforts within the community.¹⁸ It redistributes donations to those in need and it has a food bank, through which recipients can also find referrals to escape or avoid homelessness.¹⁹ It also provides confidential aid and outreach to battered women. Her commitment to their organization has demanded a great deal of her personal time. She is noted for her abilities as a counselor and a trusted confidante to those in crisis.²⁰

¹⁰ Ex. H (Credit report, dated July 18, 2008) at 8.

¹¹ Tr. 24.

¹² *Id.*

¹³ Tr. 21.

¹⁴ Tr. 25.

¹⁵ Tr. 21.

¹⁶ Tr. 21-22.

¹⁷ Ex. D-E (Community Letters, dated June 27, 2008).

¹⁸ *Id.*

¹⁹ Tr. 21-22.

²⁰ Ex. A (Personal Reference Letter of June 25, 2008).

At work, Applicant is held in high regard and known for providing good work for the company's government customers.²¹ Her employer acknowledges the underlying facts in this case and notes no suspicions or concerns regarding her trustworthiness.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ²² The burden of proof is something less than a preponderance of evidence.²³ The ultimate burden of persuasion to obtain a favorable clearance decision is on the applicant.²⁴

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration

²¹ Ex. B (Professional Reference Letter of June 25, 2008).

²² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁶ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁷ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Analysis

Based upon consideration of the evidence, and Guideline J (Criminal Conduct) and Guideline G (Alcohol Consumption) are the most pertinent to the evaluation of the facts in this case:

Guideline J, Criminal Conduct

Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations. With respect to Guideline J (Criminal Conduct), the Government has established its case. Applicant admits she was thrice cited and convicted for passing a bad check in the 1980s. She also admits she pled guilty to Filing a False Claim and Theft of Government Property during the summer of 2000. Such conduct and admissions are sufficient to raise security concerns, and invoke Criminal Conduct Disqualifying Conditions (CC DC) 1, AG ¶ 31(a) (*a single serious crime or multiple lesser offenses*), and CC DC 3, AG ¶ 31(c) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted*).

The bad check convictions occurred about two decades ago and bear little relevance to any subsequent activity. Moreover, the facts indicate that the insufficiency of funds in Applicant’s bank account was due not to any intent on her part to defraud, but to her ex-husband’s continued, unauthorized, and unknown access to her bank

²⁵ *Id.*

²⁶ *Id.*

²⁷ Executive Order 10865 § 7.

account. Consequently, these instances are not only dated in the past, but were created through unique facts unlikely to recur in the futures. As for the false claim and theft of government property, Applicant admitted the charges and pled guilty. That was over eight years ago. Since then she has not only served her sentence and made full restitution, but she has returned to work within the government contractor community with a solid and praised record, devoted numerous hours to community service, and regularly uses her own life as an example to discuss human weakness, incarceration, and the ability to turn one's life around. Taken together, Criminal Conduct Mitigating Condition (CC MC) AG ¶ 32(a) ("so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment") applies.

Indeed, Applicant's desire for complete rehabilitation even after her release from incarceration over eight years ago is impressive. Recognizing a need to give back to her community and understanding that sharing her own story with others could help her steer others away from crime, Applicant has since been selfless with both her time and her energy. Her community service is impressive. Equally impressive are her genuine and credible expressions of contrition, her expedited restitution, and the passage of time without recurrence of any dubious actions or financial problems. Consequently, CC MC AG ¶ 32(d) ("there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement") applies.

Guideline F – Financial Considerations

A failure or an 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.²⁸ The Regulation sets out several potentially disqualifying conditions under this guideline.

While briefly incarcerated in 2000 and as her husband was awaiting Workman's Compensation in 2007, two of Applicant's accounts became delinquent and her mortgage became overdue. Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(c) (a history of not meeting financial obligations) and FC DC AG ¶ 19(a) (inability or unwillingness to satisfy debts) apply. With such conditions raised, the burden shifts to Appellant to address the case against her and mitigate security concerns.

Applicant was not married when she was incarcerated in 2000. During her absence from home, she lost track of some accounts which ultimately went unpaid.

²⁸ Revised Adjudicative Guideline (AG) ¶ 18.

Specifically, a telecommunications account and a credit card became delinquent. However, both accounts were paid in full prior to the issuance of the February 2008 SOR. Moreover, when Applicant's husband was injured on the job in 2007, he could not work. The temporary loss of his income impacted family finances. The delay in receipt of Workman's Compensation made them late on their mortgage payments. By October 2007, however, the arrearage was repaid and the account was back in good standing. Once again, corrective action was taken before the SOR was issued in 2008.

Both instances were situations where Applicant had limited or no control. In neither set of facts was Applicant's response to her situation reckless or irresponsible. Both bills were ultimately paid within a reasonable amount of time – and well before the issuance of the SOR. Based on these facts, Financial Considerations Mitigating Condition (FC MC) 2, AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances) applies.

Further, the telecom and credit card delinquencies were both satisfied by 2005. Like the late mortgage, those debts became late because of unique facts and circumstances over which Applicant had no control. Financial Considerations Mitigating Condition (FC MC) 1, 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) applies. Indeed, Applicant's innate knack for budgeting, which helped her repay her restitution sum in an expedited manner, and the knowledge gleaned from financial counseling assured that her debts were addressed long before the issuance of the 2008 SOR. As a consequence, security concerns regarding Applicant's finances had been put to rest long before the SOR was issued. Therefore, FC MC 4, AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) and FC MC 3, 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) apply.

Guideline E – Personal Conduct

Security concerns arising from matters of personal conduct are controlled by Guideline E of the AG. Such security concerns arise in the presence of questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations which could indicate that the person may not properly safeguard classified information.²⁹

With regard to the three bad checks from the 1980s, there is no indication that Applicant knew she was passing along checks her bank account could not cover.

²⁹ Additionally, refusal to provide full, frank and truthful answers to lawful questions in connection with a personnel security or trustworthiness determination will normally result in an unfavorable clearance action or administrative determination of further processing for clearance eligibility.

Indeed, the facts tend to indicate that it was Applicant's ex-husband's covert use of her bank account that led to there being deficient funds in the account. Consequently, these three events from the distant past bear no adverse impact on Applicant's trustworthiness, reliability, or honesty today.

In padding her moving expenses while seeking reimbursement from the Government in 2000, however, Applicant demonstrated poor judgment, untrustworthiness, and a lack of candor. Such facts give rise to Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(c) (credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information) and AG ¶16(d) (credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information).

Applicant's padding of her moving expenses was not a recent transgression. It occurred in the summer of 2000 – over eight years ago. Moreover, this isolated incident was unique and atypical when considered within the full span of Applicant's personal and professional life, both before and after her incarceration. Indeed, it stands out in stark and singular contrast to the over two decades of Government service that preceded it and the eight years of private sector employment and volunteerism that succeeded it. Personal Conduct Mitigating Condition (PC MC) ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) applies.

Furthermore, from the time Applicant's expense report padding was exposed to the present, she has actively and diligently worked to pay for her misdeed and make up for her transgression. Rather than fight the charges, she pled guilty. She prodded the system to let her serve her time and to transition to work release in a timely manner. She expedited payment of her restitution. Applicant has since devoted her free time to her church and community charity, providing counseling and often using her own story as a morality tale to discourage contacts from turning to crime. She helped start her own community support service through her church with her husband. Eight years after her conviction, Applicant is a trusted employee, admired wife, active church organizer, tireless volunteer, and respected member of her community. She has achieved this level not by keeping her past a secret, but by sharing her past and demonstrating how one can rise above one's past. Such facts give rise to PC MC AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress).

Whole Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have also considered Applicant's highly credible testimony. She is a mature, direct, and candid individual with a fine work record and a notable record for community service. A "whole person" evaluation was also conducted.

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant's expense report padding was a blatant disregard of the rules and laws governing her employment. It was also an isolated incident. It appears to have been motivated not by a dire financial need, but by a sense that she could "work the system." She took a chance, she lost, and she continues to express her regret. On the other hand, this singular instance of reckless behavior and poor judgment occurred over eight years ago. Since that time she has completed her sentence, paid her dues to society, and made full restitution. Both her words of contrition and her explanation as to how she has tried to pay society back for her transgression are heartfelt. They are also reflected in the good works she has performed within her community for over eight years. In sharing her experiences with others, she provides a potent example of both the costs of criminal behavior and the ability to self-rehabilitate. There is no evidence that Applicant will ever again resort to such behavior. As for her financial situation, the facts show that she addressed the accounts at issue well before the issuance of the SOR and that her financial footing has been restored.

Applicant is aware that her crime was one which flagrantly violated the law and demonstrated foolish judgment. It is, however, a singular instance of an adverse volitional act within the context of a career spanning over 30 years. The Applicant of today has demonstrably learned from her experience. Taken together, her genuine contrition, her earnest efforts toward rehabilitation, and the passage of over eight years help restore her reputation and trustworthiness. In depicting her rehabilitation, Applicant has further mitigated security concerns raised from her past financial and criminal activity. In light of the whole person presented and security concerns, I conclude that it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	For Applicant
Subparagraph 3.c:	For Applicant
Subparagraph 3.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge