



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-00516
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

February 10, 2020

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guidelines E (personal conduct), F (financial considerations), and J (criminal conduct). In December 2015, Applicant was fired by her employer for her misuse of her company credit card, theft of company credit cards issued to other employees, and theft of cash from a co-worker. Applicant also failed to timely pay her federal taxes for tax years (TY) 2014 through 2017 and owes about \$8,600 of back taxes to her state government for TY 2015 through 2017. In addition, she is indebted to approximately ten creditors in a total amount of about \$14,000. She presented insufficient evidence in mitigation of the security concerns raised by her conduct and financial delinquencies. National security eligibility for access to classified information is denied.

Statement of the Case

On March 16, 2018, Applicant submitted a security clearance application (SCA) seeking to renew a previously granted clearance. On April 23, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guidelines E, F, and J. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry*

(February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016) (AG) effective for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on May 24, 2019, and requested a hearing. On August 15, 2019, she provided a supplemental answer to the SOR and changed her position about a hearing. Instead of a hearing, she elected to have her case decided on the written record. In her supplemental answer, she admitted with some explanations many of the SOR allegations and provided a detailed response to the allegations about her misconduct as an employee (SOR ¶¶ 1.a and 1.b), which she admitted, and the cross-allegation regarding her criminal conduct (SOR ¶ 3.a), which she also admitted. In addition, she claimed to have paid her past-due federal taxes and three of the 13 debts alleged in the SOR, but provided no documentary evidence to support her claim.

Department Counsel submitted the Government's written case in a File of Relevant Material (FORM), dated August 30, 2019, which included nine attached documents identified as Items 1-9. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file within 30 days of her receipt of the FORM any objections and to submit a written response and documents to refute, extenuate, or mitigate the security concerns raised by the SOR allegations. Applicant received the FORM on September 12, 2019. She did not submit any objections or a response. I have marked Items 1 through 9 attached to the FORM as Government Exhibit (GE) 1-9, respectively. In the absence of any objection from Applicant, I have admitted all of the Government's evidence into the record. The case was assigned to me on November 21, 2019.

Findings of Fact

I have incorporated Applicant's admissions in her response to the SOR allegations in my findings of fact, and I have noted her comments in mitigation. Applicant's personal information is extracted from GE 4, her SCA, unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, the Government's FORM, and the documentary evidence in the record, I make the following findings of fact:

Applicant, 37, has worked as a junior configuration manager for a federal contractor since March 2018. She received a high school diploma and has some college credits, but she has not earned a degree. She enlisted in the U.S. Navy in June 2000 and served until December 2009, when she was honorably discharged. She has married twice, first in 2002, and then in 2009. Her first marriage ended in divorce in 2006. She has one minor child. She was granted a secret clearance in 2000 and a top secret clearance in 2003 while in the Navy, but does not presently hold a clearance.

Applicant experienced significant financial problems in 2015. The cause of these problems is not in the record. She borrowed money from family and friends. She found a potential source of a loan online and pursued a request for a loan of \$18,000. It turned out that the online lender was running a scam and somehow convinced Applicant to pay over \$100,000 in “fees” via wire transfers to various recipients in African countries. It is not apparent from the record how Applicant secured that much money to pay the fees. She claims that she was being coerced with threats of arrest if she did not honor her commitment to pay the fees. In essence, Applicant paid \$100,000 in blackmail over a number of months in 2015 to avoid “arrest,” which would mean her family would learn what she had done.

One source of the funds Applicant used to pay her blackmailer (the Scam Artist) was her company credit card. She incurred about \$16,000 in unauthorized charges purchasing gift cards, which she converted into cash. She also surreptitiously took company credit cards from the wallets of co-workers and purchased gift cards on those credit cards to raise cash.

When her employer discovered her misconduct, it terminated her in December 2015 for her “gross misconduct in connection with [her] misappropriation and abuse of corporate credit cards.” After she lost her job, she defaulted on her home mortgage and the lender foreclosed on her home. Since her theft occurred on Navy property, the Navy Criminal Investigation Service (NCIS) investigated and sought charges under two federal criminal statutes. The record is incomplete regarding the disposition of the charges. (GE 3, 5, 6, 7 at 4.)

SOR Allegations, Evidence, and Findings

Under Guideline E, the SOR alleges in SOR ¶ 1.a Applicant’s December 2015 termination of employment and the reasons for her employer’s actions described above. It also alleges in SOR ¶ 1.b her involvement in the fraudulent loan and the extraordinary amount of fees she paid, supposedly in an effort to secure an \$18,000 loan, using money paid to her on an insurance claim, personal credit cards, and loans from family members, among many sources. The allegations in SOR ¶ 1.a involving theft are cross-alleged in SOR ¶ 3.a under Guideline J. (GE 3.)

Applicant admitted her criminal misconduct in her supplemental SOR answer. She notes that she stopped paying the Scam Artist in December 2015. She wrote that she did not take cash from her co-worker, but understood that her denial was not believed because she admitted removing the company credit cards from the wallets of her co-workers. She repaid the \$180. Her employer did not seek reimbursement of the charges she put on her company credit card. She regrets her mistakes in 2015 and feels remorse over what she did and the damage she caused herself and her family. (GE 3; GE 5 at 3; GE 7.)

The SOR also alleges that Applicant owes a total of about \$46,000 to the IRS and her state government, as well as a number of commercial creditors. Applicant’s responses

to the Government's interrogatories confirm the SOR allegations regarding her tax debts, as of March 15, 2019. As noted, she claimed in her supplemental answer to the SOR that she has paid her federal tax debts of about \$10,000 for TY 2014 through 2017. (SOR ¶¶ 2.a-2.d.) She provided no documentary evidence to support her claims that she has paid her federal tax delinquencies. (GE 3 at 12-13; GE 5 at 7, 8.)

Applicant also claimed that she was in the process of setting up a payment plan to pay about \$8,600 in delinquent taxes owed to her state government for TY 2015 through 2017. She apparently incurred these tax delinquencies by under withholding on her income or that of her husband, who serves in the U.S. military. (SOR ¶¶ 2.e-2.g.) (GE 3.)

Applicant further claims that she is paying off a credit-card debt of \$10,500 pursuant to a payment plan (SOR ¶ 2.i.) and has paid three other debts alleged in the SOR totaling about \$2,400. (SOR ¶¶ 2.n, 2.p, and 2.t.). Applicant also admitted an SOR allegation that her mortgage lender foreclosed on her home after defaulting in 2015. The foreclosure was concluded in 2017 and Applicant has no further obligation on that loan. (SOR ¶ 2.h.) The two credit reports in the record establish Applicant's commercial debts as alleged in the SOR. (GE 3; GE 5 at 4; GE 7, GE 8.)

Assuming Applicant's claims are truthful, she still is indebted to 11 creditors in the total amount of over \$22,000. In her supplemental SOR answer, she wrote that she intends to pay off these creditors with payment plans as soon as she has paid the one she currently is paying under a payments plan. (GE 3.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable in making a decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard

classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant's admissions in her SOR answer, and the documentary evidence in the record, establish the following potentially disqualifying conditions under this guideline:

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 individual may not properly safeguard classified or sensitive information;

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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources;

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;

AG ¶ 16(f): violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

AG ¶ 16(g): association with persons involved in criminal activity.

The record evidence establishes all of the above potentially disqualifying conditions. The evidence of Applicant's behavior leading up to her dismissal by her employer supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, a lack of candor, unwillingness to comply with rules and regulations, and other characteristics indicating that Applicant may not properly safeguard classified or sensitive information. This behavior demonstrates a pattern of dishonesty or rule violations and a significant misuse of her employer's resources. Her financial dealings with an obvious criminal that eventually amounted to paying blackmail to keep her

husband, family, and friends from knowing the truth about her actions, demonstrates her vulnerability to exploitation by others. Her conduct also involves activities, which, if known, could affect her personal, professional, and community standing. While the record evidence is incomplete regarding a written or recorded commitment as a condition of employment, her employer's trust in giving her a company credit card was violated by her actions. Lastly, association with the Scam Artist through her payments of over \$100,000 to a person who was obviously engaged in criminal conduct raises serious security concerns.

The following mitigating conditions are potentially applicable:

AG ¶ 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;

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

AG ¶ 17(g): association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant's offenses were serious, frequent, and recent. While the circumstances were unique, it is foreseeable that she could exercise poor judgment again when facing financial pressures. Her continued payments of such large sums of money to the Scam Artist casts doubt on her reliability, trustworthiness and good judgment. AG ¶ 17(c) is not established.

Applicant has acknowledged her criminal behavior and her irresponsible actions that caused serious financial damage to her family, including the loss of her job and their home. There is no evidence that she obtained any counseling, however. She remains under significant financial pressure with unpaid taxes and debts. The stressors that contributed to her untrustworthy, unreliable, and inappropriate behavior remain, making it impossible to conclude that other irresponsible behavior is unlikely to recur. AG ¶ 17(d) is only partially established.

Applicant has disclosed her past mistakes to her husband, which reduces her vulnerability to exploitation, manipulation, or duress. The Scam Artist is still able to contact

her and threaten her. She is not free of any future vulnerability to exploitation. AG ¶ 17(e) is only partially established.

Applicant's association with the Scam Artist was initially unwitting, but as it became obvious that he was engaged in a criminal scheme, she continued to borrow and then steal funds to meet his blackmail demands. Her association with this criminal continued for many months in 2015 and casts doubt upon her reliability, trustworthiness, judgment, and willingness to comply with rules and regulations. AG ¶ 17(g) is only partially established.

As a whole, Applicant's mitigating evidence does not sufficiently mitigate the security concerns raised by her personal conduct.

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18 as follows:

Failure 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 or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant's admissions in her SOR answer, and the documentary evidence in the record, establish the following potentially disqualifying conditions under this guideline: AG ¶¶ 19(a) ("inability to satisfy debts"); 19(c) ("a history of not meeting financial obligations"); 19(d) ("deceptive or illegal financial practices such as embezzlement, employee theft . . . expense account fraud . . . and other intentional financial breaches of trust."); and 19(f) ("failure to . . . pay annual Federal, state, or local income tax as required").

The following mitigating conditions are potentially applicable:

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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay creditors or otherwise resolve debts; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

As noted above, the behavior was not infrequent or did not happen so long ago. It occurred under unusual circumstances, but since Applicant continues to experience financial distress, it cannot be concluded that her financial issues are unlikely to recur. Moreover, her behavior casts doubt on her reliability, trustworthiness and good judgment. AG ¶ 20(a) is not established.

Applicant claims that she has paid her federal tax delinquencies and three of her commercial debts, but has offered no documentary evidence to support her assertions. Even if she has paid her federal tax debts and a few other debts, she has numerous large debts remaining, including state tax delinquencies. AG ¶ 20(e) only partially applies.

Applicant writes that she has paid her 2014 through 2017 federal taxes. However, the fact that she allowed delinquencies to occur for several years after she had stopped making blackmail payments to the Scam Artist undercuts the mitigation value of any payments she has made since March 2019 when she disclosed her federal and state tax debts in her interrogatory responses. She also owes state taxes in the approximate amount of \$8,600 as of the close of the record for TY 2015 through 2017. AG ¶ 20(g) only partially applies.

As a whole, Applicant's mitigating evidence does not sufficiently mitigate the security concerns raised by her financial considerations.

Guideline J, Criminal Conduct

The security concern under this guideline is set out in AG ¶ 30 as follows:

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.

Applicant's admissions in her SOR answer and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline:

AG ¶ 31(a): a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant's misuse of her company credit card, her theft of the corporate credit cards of two colleagues, and her admitted crime of stealing cash from a colleague were not minor offenses. They also evidence a pattern of criminal conduct that casts doubt on her judgment, reliability, and trustworthiness. Both AG ¶¶ 31(a) and 31(b) are established.

The following mitigating conditions are potentially applicable:

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; and

AG ¶ 32(b): the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life.

As noted above, insufficient time has elapsed since Applicant committed the criminal behavior to eliminate the likelihood that she might commit similar crimes in the future. The circumstances under which she committed these crimes were unusual, but the underlying cause was Applicant's financial problems, which are still present. She sought a "loan" of \$18,000 to solve her family's financial debts. She presently owes more than that in taxes and consumer debts. Applicant's criminal behavior casts doubt on her reliability, trustworthiness and good judgment. AG ¶ 32(a) is not established.

Applicant was pressured into a situation by the Scam Artist where she felt she had no choice but to take funds from her employer and violate her co-workers trust by stealing and misusing their corporate credit cards. It took her far too long to realize that she had made the wrong choice. Even though the Scam Artist is still trying to contact her, she has made the right choice to ignore his communications. AG ¶ 32(b) is established.

As a whole, Applicant's mitigating evidence does not sufficiently mitigate the security concerns raised by her criminal conduct.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a

security clearance by considering the totality of the applicant's conduct and all relevant circumstances and applying the adjudicative factors in AG ¶ 2(d). These factors are:

- (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) the 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.

I have incorporated my comments under Guidelines E, F, and J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines E, F, and J and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her personal conduct, financial considerations, and criminal conduct.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a through 2.d:	For Applicant
Subparagraphs 2.e through 2.h:	Against Applicant
Subparagraph 2.i:	For Applicant
Subparagraphs 2.j through 2.m:	Against Applicant
Subparagraph 2.n:	For Applicant
Subparagraph 2.o:	Against Applicant
Subparagraph 2.p:	For Applicant
Subparagraphs 2.q through 2.s:	Against Applicant
Subparagraph 2.t:	For Applicant
Subparagraph 2.u:	Against Applicant
Paragraph 3, Criminal Conduct:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Clearance is denied.

John Bayard Glendon
Administrative Judge