



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



In the matter of:)	
)	
)	ISCR Case: 13-01150
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

August 20, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant accumulated 36 delinquent debts totaling \$38,157 between 2009 and 2013. From 1985 to 2011, Applicant was charged with 25 criminal violations or traffic infractions. She falsified her electronic Questionnaires for Investigative Processing (e-QIP). Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On June 6, 2013, Applicant submitted an e-QIP. On February 28, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guidelines J (Criminal Conduct), F (Financial Considerations), and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

On March 20, 2014, Applicant answered the SOR and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 4.) On June 6, 2014, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 31 Items, was mailed to Applicant on June 9, 2014. She received the FORM on June 21, 2014, and was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. She provided no additional information. DOHA assigned the case to me on August 8, 2014.

Findings of Fact

In her Answer to the SOR, Applicant admitted all of the allegations contained in paragraphs 1.a through 1.y, and 2.a through 2.kk.¹ She failed to admit or deny paragraph 3.a. (Answer.)

Applicant is 40 years old and has been separated from her spouse since 2005. She has two sons, ages 19 and 15. She graduated high school and has attended community college. She has been employed by a government contractor since October 2011. (Item 4; Item 5.)

Under the Guideline for Criminal Conduct, the Government alleged that Applicant is ineligible for a clearance because her record of criminal activity created doubt about her judgment, reliability, and trustworthiness. The SOR identified that between 1985 and 2011, Applicant was charged with 25 criminal violations or traffic infractions. The violations include: Burglary-juvenile; Forgery-juvenile; Failure to Appear; Assault and Interference with Official Acts; two separate incidents of Disturbing the Peace; Carrying a Concealed Weapon; Driving While License Suspended; two separate instances of Speeding; Supplying Alcohol to Minor; Animal Running at Large; Failure to Secure a Child; Failure to Transfer Title; Dark Window or Windshield; Possession of a Controlled Substance; Operation without Registration; Careless Driving; and seven separate violations of failing to provide Financial Liability Coverage. (Answer; Items 5 through 27.)

Applicant admitted all of those criminal and traffic offenses in her Answer to the SOR. Applicant was incarcerated for undisclosed periods in a juvenile facility for both the 1985 Burglary-juvenile and 1988 Forgery-juvenile. In 1991 Applicant was sentenced to seven days confinement (suspended), as a result of the Failure to Appear conviction. She was convicted in 1993 of carrying a concealed weapon and was sentenced to 60 days confinement (suspended), placed on one year of supervised probation, and required to perform community service. The charge for Possession of a Controlled Substance in 2003 was dismissed after Applicant successfully completed "a few years" of probation. The 1993 charge of Disturbing the Peace and the 1995 Driving with license Suspended lacked dispositions. Applicant was found guilty and was fined in

¹ The SOR was incorrectly lettered. There was no allegation 2.q.

varying amounts, between \$27 and \$740, as a result of each of the remaining 16 charges. Two of the charges of Financial Liability Coverage were dismissed. Court records, case summaries, and arrest records further substantiate the Government's allegations 1.a through 1.y. (Answer; Items 5 through 27.)

Under the Guideline for Financial Considerations, the Government alleged that Applicant is ineligible for a clearance because she made decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness, and ability to protect classified information. The SOR identified financial concerns arising from 36 delinquent debts totaling \$38,157. Of those debts, 23 were identified as medical collection accounts (as stated in SOR allegations 2.d through 2.p, 2.r, 2.s, 2.bb, and 2.dd through 2.kk) and were incurred between 2009 and 2013. Six other debts were identified as delinquent student loans (as stated in SOR allegations 2.u through 2.z). The remaining seven accounts are: a 2010 judgment for delinquent consumer debt (2.a); a debt related to an apartment Applicant once occupied (2.b); a debt owed to a bank (2.c); an unspecified debt sent to a collection service (2.t); and two a credit card debts (2.aa and 2.cc). Applicant's debts appear in credit reports entered into evidence. (Item 5; Items 28 through 30.)

Applicant attributed her financial problems to "being a single mother with [two] children, having medical expenses due to an injury[,] and costs associated from separating from her spouse." She claimed to be in the process of "fixing her [financial] situation" at the time of her June 2013 interview with a Government investigator. She indicated she was trying to resolve the situation herself, despite consulting in the past with an attorney and a credit counseling service. Her student loan debt identified in allegation 2.u. is the consolidated account for allegations 2.v through 2.z. Applicant's credit report of June 2, 2014, reflects those student loans in allegations 2.v through 2.z accounts as "sold." It notes that her consolidated student loan identified in 2.u is currently "180 days or more past due." The June 2, 2014 credit report also lists ten small medical debts that have been satisfied, and 14 medical debts that remain delinquent. The amounts of the paid medical accounts do not appear to correspond to the debts alleged in the SOR, and she failed to produce documentation to show that any of the SOR-alleged debts are paid. Her June 2, 2014 credit report reflects approximately \$19,156 in delinquent debt. Applicant failed to offer documentation that she has made payments or otherwise addressed any of the remaining debts. (Item 5.)

Personal Conduct security concerns arose out of Applicant's failure to disclose her arrest for Possession of a Controlled Substance on her e-QIP in Section 22. Section 22 asked Applicant, "Other than those offenses already listed, have you EVER been charged with an offense involving alcohol or drugs?" Applicant answered "No." During a June 2013 interview with a Government investigator, she "initially denied any police record" and only provided information concerning a Controlled Substance violation in 2003 and other arrests after she was confronted about her criminal record. Applicant explained to the investigator that she did not list the Controlled Substance violation on

her e-QIP “because it happened in 2003, the sentence was deferred and she was not sure of its felony status. Also, [Applicant’s] supervisor told her it was not relevant.” (Item 4; Item 5.)

Applicant did not submit evidence that she obtained any type of counseling or sought assistance with resolving her debts. She did not provide a budget. She submitted no evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. She provided no character references describing her judgment, trustworthiness, integrity, or reliability. She failed to offer evidence of rehabilitation.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 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.

Analysis

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to 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.

AG ¶ 31 describes conditions that could generate a security concern and may be disqualifying. The condition potentially raised by the evidence is AG ¶ 31:

(a) a single serious crime or multiple lesser offenses.

During the period from 1985 to 2011, Applicant was arrested and sentenced for committing four serious crimes, including Burglary-juvenile; Forgery-juvenile; Assault and Interference with Official Acts; and Possession of a Controlled Substance. She also was convicted of Disturbing the Peace; Carrying a Concealed Weapon; Supplying Alcohol to Minor; Animal Running at Large; and multiple traffic infractions including: Operation without Registration; Failure to Appear; two separate instances of Speeding; Failure to Secure a Child; Failure to Transfer Title; Dark Window or Windshield; Careless Driving; and several violations of failing to provide Financial Liability Coverage. Security concerns under AG ¶ 31(a) are raised by the record.

AG ¶ 32 provides conditions that could mitigate criminal conduct security concerns. These are:

(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;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

(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.

From 1985 to 2011, Applicant was arrested, charged, and convicted of numerous serious crimes. While her recent criminal conduct involves repeated traffic offenses, her extended criminal history includes: a 2003 Controlled Substances offense; a 1992 Assault; a 1988 Forgery; and a 1985 Burglary. Applicant has produced no evidence to show that criminal conduct is unlikely to recur. Her past criminal conduct continues to cast doubt on her reliability, trustworthiness, or good judgment. AG ¶ 32(a) does not apply.

Applicant made no showing that she was pressured or coerced into any of her criminal acts, which evidence is necessary to support the application of AG ¶ 32(b). She failed to introduce evidence that she did not commit any alleged offense, as required for AG ¶ 32(c) to be applicable.

Applicant failed to show evidence of successful rehabilitation. While she has not been charged or arrested with any crimes since 2011, not enough time has passed to assure the Government that Applicant has made positive behavioral changes that will lead her to abstain from criminal conduct in the future. She failed to introduce evidence of remorse or restitution, job training or higher education, a good employment record, or constructive community involvement. AG ¶ 32(d) is not mitigating.

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated 36 delinquent debts totaling \$38,157 between 2009 and 2013, which she has been unable or unwilling to satisfy. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial obligations:

- (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;
- (b) the conditions that resulted in the financial problem 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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's delinquent debts began accumulating in 2009 and continue to date. Because she failed to prove that she addressed any debts, she did not demonstrate that such problems are unlikely to continue or recur. Her reliability, judgment, and trustworthiness in managing delinquent debts remain a concern. The evidence does not support the application of AG ¶ 20(a).

Applicant asserted that her financial problems arose as a result of being a single mother of two children, having unexpected medical expenses, and her separation from

her husband. However, she provided no explanation for her failure to resolve the debts since 2011, when she became employed with a government contractor, or why she continues to incur additional delinquent debts. She did not submit sufficient evidence to demonstrate that her financial problems arose as a consequence of circumstances that were beyond her control or that she is acting responsibly with respect to those debts. AG ¶ 20(b) does not apply.

Applicant has not participated in financial or credit counseling, and there are no clear indications that her delinquent debts are under control. Hence, AG ¶ 20(c) has no application. Because Applicant provided no evidence documenting a good-faith effort to resolve debts, AG ¶ 20(d) does not apply.

Applicant provided no proof to substantiate the basis of any disputes. She provided no evidence of actions taken to resolve issues through the dispute process. AG ¶ 20(e) has no application.

Guideline E, Personal Conduct

The security concern for the Personal Conduct 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to identify her arrest for Possession of a Controlled Substance in March 2003 on her e-QIP. She clearly knew she had been arrested and charged with a drug-related offense. Yet, she willfully chose not to include it on the e-QIP. This behavior indicates questionable judgment and untrustworthiness.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering the mitigating conditions outlined above in AG ¶ 17, none of them were established in this case. Applicant did not make prompt or good-faith efforts to correct her falsification or concealment. During her personal security interview, she initially denied all arrests to the investigative agent. She only admitted to the arrest after she was confronted by the investigator. She provided no independent or corroborating evidence that indicated she was ill-advised in completing her e-QIP, despite her contention that her boss suggested she omit the arrest because it was not relevant. That claim is uncorroborated and not credible. Falsifying material information is a serious offense and Applicant has provided no persuasive documentation to demonstrate that similar lapses in judgment are unlikely to recur. Further, she failed to take responsibility for her actions. She has not provided sufficient evidence to meet her burden of proof for her personal conduct.

Whole-Person Concept

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 relevant 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) 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.

According to 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. I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence leaves me with serious doubt as to Applicant's present eligibility and suitability for a security clearance. She is a mature individual, who has violated laws, rules, and regulations for 26 years. In fact, her intentional falsification of a e-QIP in 2013 is an additional crime for which she has not been charged. She also has a history of financial indebtedness that has not been resolved. She presented no evidence of rehabilitation. She did not meet her burden to mitigate the security concerns arising under the Guidelines for Criminal Conduct, Financial Considerations, and Personal Conduct.

Formal Findings

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

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a through 1.y:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a through 2.p:	Against Applicant
Subparagraphs 2.r through 2.kk:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge