



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00376

Appearances

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

04/03/2015

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated security concerns regarding his personal conduct, but did not mitigate the security concerns regarding her financial considerations. Eligibility for access to classified information is denied.

History of the Case

On April 4, 2014, the Department of Defense (DOD) Consolidated Adjudicative Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on July 14, 2014, and elected to have her case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on December 1, 2014, and did not respond to the FORM. The case was assigned to me on March 10, 2015.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 10 delinquent debts. Together, they exceed \$45,000.

Under Guideline E, Applicant allegedly falsified her security clearance application of August 5, 2013 by omitting (a) her felony embezzlement charge of August 1997 and (b) several of her debts (i.e., debts covered by subparagraphs 1.e, 1.g, and 1.h) reported to be over 120 days delinquent within the past seven years and two debts turned over to collections (i.e., debts covered by subparagraphs 1.d and 1.f).

In her response to the SOR (Item 2), Applicant admitted the allegations covered by the financial considerations guideline. She denied falsifying her security clearance application. She claimed she completed the application in haste and neglected to alter her old answers to a previous clearance application. She claimed most of the delinquent debts are old debts that have either been removed from her credit report or are soon to be removed.

Applicant provided additional explanations in her response. She claimed she is the proud mother of three daughters and is a model citizen who fell on hard times several years back. She claimed she inadvertently omitted information pertaining to her felony embezzlement charge and delinquent debts. (Item 2)

Findings of Fact

Applicant is a 44-year-old project manager of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in July 2003, separated from her husband in 2006, and divorced him in July 2010. (Items 3-5) She has one child from this marriage and two children from another relationship. (Items 2 and 5) Applicant earned a bachelor's degree in October 2005 from an accredited technical school. (Item 2) She is currently enrolled in an on-line religious course. She claims no military service. (Items 2 and 5)

Applicant's finances

Applicant purchased a home in July 2006 for \$125,000 and financed her purchase with two adjustable rate mortgages: a first mortgage for \$102,400 and a second mortgage for \$25,691. (Items 5-7) Two months later (in September 2006) the

lender sold both mortgages to another lender. (Items 5-7) She fell behind with the payments in 2007 following her marital separation when the interest rates on both mortgages escalated. (Items 5-7) The holder of the first mortgage foreclosed in 2009. (Items 5-7) Addressing the foreclosure, Applicant could not provide any information on the proceeds produced at the auction sale and how much the loan balance was reduced. (Item 5) Credit reports reveal that Applicant's second mortgage is unsecured, which suggests the foreclosure sale did not produce enough proceeds to cover any of the balance owing on the second mortgage. (Items 6 and 7). Applicant ceased efforts to address these two real estate loans after the debts fell off her credit report in 2014. (Item 3)

Between 2007 and 2014, Applicant encountered continuing difficulties in addressing her other debts following her marital separation, resulting divorce, and ensuing problems in locating full-time employment. While unemployed, she relied on savings to care for herself and her child. (Item 5) Credit reports document that between 2009 and 2014, she accumulated eight delinquent medical and consumer debts during this time period that exceeded \$12,000 in the aggregate. (Item 5) Asked in a 2013 interview by an OPM agent how she planned to address these debts, she indicated they had since fallen off her credit report and she had no plans to pay them. (Item 5)

Credit reports show that none of these accounts were addressed before Applicant received the SOR in April 2014. (Items 6 and 7) Applicant continues to dispute the listed debts and has made no manifest attempts since she received the SOR to address her debts.

Background information from Applicant's security clearance application reveals that Applicant has been gainfully employed on a full-time basis since at least November 2011. (Item 4) There is nothing in her clearance application or summary of interview with an agent of the Office of Personnel Management (OPM) to confirm any periods of underemployment or temporary layoffs since she returned to full-time employment in November 2011. No family disabilities or extraordinary medical expenses are noted in either of Applicant's credit reports (Items 6 and 7) or response.

While Applicant promised to address her identified delinquent debts in her OPM interview, she has made no documented follow-up efforts to pay any of the remaining debts. Many of these covered debts are dated and have been delinquent for many years. (Items 5-7) Further, records do not reflect any financial counseling initiatives by Applicant. Afforded an opportunity to respond to the FORM, Applicant provided no additional payment documentation or information.

Applicant's e-QIP omissions

In August 2013, Applicant completed an e-QIP application. Asked to indicate whether she had ever been charged with any felony offense (Section 22), she answered in the negative. (Item 4) In answering "no" to the question, she omitted her 1997 felony embezzlement offense. She denied any deliberate attempt to omit the 1997 felony charge and attributed her omission to her misunderstanding over whether she

needed to update information beyond 10 years. (Item 3) Applicant's sworn answers, while not corroborated, are sufficiently plausible to meet credibility requirements necessary for acceptance.

Applicant answered "no" as well to the question asked of her in the same August 2013 e-QIP (Section 26) as to whether she had any debts charged off, in collection, or over 120 days delinquent in the previous seven years or currently over 120 days delinquent. (Item 4) While she admitted the delinquent mortgage debts associated with creditors 1.i and 1.j, she omitted the charged off delinquent debt associated with creditor 1.d and the delinquent debt referred to collection by creditor 1.f. Applicant denied any deliberate intention to provide false information about these debts and attributed her denials to an inadvertent mistake on her part due to her lack of information at the time about any other delinquent debts besides her two mortgage debts that she listed. (Items 3 and 5) She acknowledged her inadvertent omissions in her OPM interview when asked about them, and her explanations are entitled to acceptance as credible accounts of her debt omissions.

Endorsements

Applicant provided no endorsements or performance evaluations on her behalf. Nor did she provide any proof of community and civic contributions.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: Failure or inability to live within one's means satisfy debt 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. (AG, ¶ 18)

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. *See United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant’s accumulation of delinquent debts over a considerable number of years that she failed to address with the resources available to her. Applicant’s recurrent problems with managing her finances over an extended number of years (at least since 2009) reflect lapses of judgment in administering her financial responsibilities. Additional security concerns are raised over her failure to list her prior felony charge and delinquent debts in the e-QIP she completed in August 2013.

Financial Concerns

Applicant’s pleading admissions of her delinquent debts covered in the SOR negate the need for any independent proof. See ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995 (“any admissions [applicant] made to the SOR allegations . . . relieve Department Counsel of its burden of proof”). See, *generally*, *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant’s listed debts are fully documented in her latest credit reports and provide ample corroboration of her debts.

Since November 2011, Applicant has enjoyed steady gainful employment without any visible breaks in work status. Credit reports reveal, though, that she neglected to manage her finances and cure the delinquencies in her listed medical, consumer, and real estate accounts before or after the issuance of the SOR. She disputes each of the listed debts on the grounds they have been since removed from her most recent credit report. Applicant claims that because of their removal, she no longer has any payment responsibilities for any of these debts.

Without any controlling statute of limitations, Applicant’s claims have no legal merit. Based on the developed record, it remains unclear whether any statute of limitations in her state of residence would have any application to her situation.

With her increased earnings from her sustained employment over a four-year period at her disposal to address her overdue accounts, Applicant could be expected to make more concerted efforts to address her delinquent debts. Applicant’s actions warrant the application of two of the disqualifying conditions (DC) of the Guidelines DC ¶ 19(a), “inability or unwillingness to satisfy debts;” and DC ¶ 19(c) “a history of not meeting financial obligations.”

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are explicit in cases involving debt delinquencies and apply to Applicant's situation.

Some extenuating circumstances are associated with Applicant's loss of employment in 2011 and increased family responsibilities following her marital separation in 2006, her resulting divorce in 2010, and her loss of income related to her unemployment throughout 2011. However, since November 2011, she has enjoyed full-time employment and could be expected to show more progress in addressing her finances. As a result, neither MC ¶ 20(a), "the behavior happened a long time 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," nor MC ¶ 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," are entitled to any more than partial application.

Financial counseling could have been helpful to Applicant in devising a repayment plan to address her debts. However, records do not reveal any financial counseling initiatives pursued by Applicant before or after her receipt of the SOR. Based on the facts and circumstances presented, MC ¶ 20(c), "the person has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control," is not applicable to Applicant's situation.

Applicant's finances have been marked by recurrent periods of instability for a number of years and show insufficient signs of stabilizing. She still must address her listed debts covered in the SOR before she can restore her finances to acceptable levels of stability commensurate with holding a security clearance.

Afforded opportunities to follow through with updated payment documentation and initiatives, Applicant has failed to document any follow-through on her debts. Her financial history reveals little attention to exploring payment initiatives before or after the issuance of the SOR.

While an applicant need not have paid every debt alleged in the SOR, the applicant needs to establish that there is a credible and realistic plan to resolve identified financial problems, accompanied by significant actions to implement the plan. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). To date, Applicant has made no tangible progress in addressing any of her listed debts. More is needed of Applicant with the income resources currently available to her.

From a whole-person standpoint, the evidence reveals recurrent lapses of judgment associated with Applicant's accumulation of delinquent debts and her failure to

address them with the increased income available to her since November 2011. Without any evidence of work performance or community and civic contributions to weigh and consider, there is little evidence in the record by which to make a whole-person assessment of Applicant's accomplishments in her business and personal life.

Overall, Applicant's efforts to date are insufficient to meet mitigation requirements imposed by the AGs governing her finances. Unfavorable conclusions are warranted with respect to the allegations covered by Guideline F.

Personal Conduct Concerns

In the process of completing an e-QIP in August 2013, Applicant omitted her felony embezzlement charges of August 1997 in response to a question asking her whether she had ever been charged with a felony offense. She claimed that she previously reported the offense in prior security clearance applications but failed to provide any documented proof of her disclosures.

In the same e-QIP application of August 2013, Applicant omitted all but two of the debts listed in the SOR. Claiming she did not recall any of the listed accounts, she denied any intentional omissions of the listed debts.

Security concerns over Applicant's judgment, reliability and trustworthiness are raised under Guideline E as the result of her omission of her 1997 felony charges and several of her reported delinquent debts in the e-QIP she completed in August 2013. By her statements and actions, Applicant placed in issue her judgment and fiducial commitment to safeguarding classified and other sensitive materials.

One of the disqualifying conditions covered by Guideline E is applicable. DC ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts to 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." DC ¶ 16(a) may be considered in evaluating Applicant's August 2013 e-QIP, her OPM statements, and her sworn response to the SOR.

Traditional assessments of falsification in ISCR proceedings include considerations of motive in determining whether particular applicants engaged in knowing and willful concealment. Both Guideline E and relevant case authorities underscore the importance of motive and subjective intent considerations in gauging knowing and willful behavior. See ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006)(citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). See, generally, *United States v. Chapin*, 515 F.2d 1274, 1283-84 (D.C. Cir. 1975); *United States v. Steinhilber*, 484 F.2d 386, 389-90 (8th Cir. 1973); *United States v. Diogo*, 320 F.2d 898, 905 (2d Cir. 1963).

Put differently, the Government must be able to negate any reasonable interpretation that will make Applicant's explanations about her felony charge conviction and debt delinquency omissions in her e-QIP factually justifiable. Use of a subjective

intent test is not intended to straightjacket either party with particular words and phrases, but rather to avert definitional traps.

Under the facts and circumstances of this case, Applicant's omissions were neither knowing nor willful, but were based on mistake and inadvertence of whether she needed to list a 1997 felony charge over 15 years old and debts she did not believe were listed on her credit report. While "yes" answers with explanations about the status of the aged felony charge and her impressions of the omitted delinquent accounts would have better served herself and the Government, Applicant's "no" answers do not reflect any knowing and willful intent to conceal.

To the extent mitigating considerations are necessary to correct any judgment lapses associated with Applicant responses to the felony charge and financial questions covered in Sections 22 and 26 of her e-QIP, Applicant is entitled credit for her disclosing general information (with explanations for her omissions), about her debts that were either charged off, referred for collection, or in default when first questioned by the OPM agent who interviewed her in August 2013.

While Applicant's interview corrections and explanations do not meet the prompt, good-faith requirements of MC ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," they are sufficient to entitle Applicant to satisfy the infrequent, unique circumstances requirements of 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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." MC ¶ 17(c) of Guideline E applies to Applicant's situation.

Considering all of the circumstances surrounding Applicant's 2013 e-QIP omissions and ensuing accounts under both a Guideline E evaluation and whole-person assessment, Applicant's omissions of her 1997 felony embezzlement charge and delinquent debts are refuted as to any knowing and willful omissions. Imputed judgment lapses associated with her omissions are mitigated. In making a whole-person assessment, careful consideration was given to the respective burdens of proof established in *Egan (supra)*, the AGs, and the facts and circumstances of this case in the context of the whole person. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 2.a and 2.b.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs. 1.a-1.j:

Against Applicant

GUIDELINE E (PERSONAL CONDUCT):

FOR APPLICANT

Subparagraphs 2.a-2.b:

For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

