



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



In the matter of:)	
)	
)	ISCR Case No. 14-00451
)	
)	
Applicant for Security Clearance)	

Appearances

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

11/14/2014

Decision

LYNCH, Noreen A., Administrative Judge:

On March 21, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on August 28, 2014. A notice of hearing was issued on September 12, 2014, scheduling the hearing for October 23, 2014. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A- H, which were admitted without objection. I held the record open for additional submissions until November 7, 2014. Applicant timely submitted four documents, which were admitted as AX I-L, without objection. The transcript was received on November 3, 2014. Based on a

review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Department Counsel requested that I amend the SOR by adding an allegation, as SOR ¶ 1.p, that Applicant is indebted to the Federal Government for unpaid taxes for the year 2013 in the approximate amount of \$10,000. As of the date of the SOR, it remains unpaid. I granted the motion to amend. (Tr. 49)

Findings of Fact

In her answer to the SOR, Applicant admitted the majority of the SOR allegations under Guideline F. She “admitted and denied” the allegation under Guideline E, and provided explanations. I am treating this as a denial.

Applicant is 36 years old. She graduated from high school in 1997, obtained her undergraduate degree in 2002, and her master’s degree in 2007. Applicant married in 2004. She has three children. Applicant completed her first security clearance application in August 2013. She has been employed with her current employer since September 2010. (GX 1)

The SOR alleges 14 delinquent debts, including unpaid federal taxes for 2010, 2011, 2012, and 2013. The other delinquent debts are collection accounts totaling approximately \$41,760.

Applicant’s financial difficulties began in June 2009, when her husband lost his job. He was unemployed for about four months. (Tr.44) Approximately one year later in July 2010. Applicant was laid off from her job. Applicant’s two children attended private schools, and she did not want to disrupt their schooling, so they remained in their respective schools. The annual tuition for each child was approximately \$10,000. Another large expense was daycare. Applicant was concerned with maintaining her family. (Tr. 37)

During this time period with reduced income, Applicant did not pay her federal taxes. She has unpaid taxes for the years 2010, 2011, 2012, and 2013. Applicant provided for her family as best she could. However, she began to use credit cards for expenses. In 2014, Applicant opened seven new credit cards to charge clothing, furniture and other items. She purchased a new vehicle in 2013. (Tr. 54)

As to SOR allegation 1. a. this debt is paid. In a 2011 installment agreement with the IRS, Applicant paid \$902 for the unpaid taxes for tax year 2010. (AX C)

Allegations 1.b, 1c, and 1.p relate to the unpaid taxes for years 2011, 2012, and 2013. Applicant entered into an installment agreement with the IRS. She submitted documentation that she has made monthly payments of \$450 current to October 2014.

(AX F and J) The payments are automatically deducted from her bank account each month.

Applicant submitted a 2014 payment history from a firm who is in the process of settling a number of her delinquent accounts. (AX A) She stated that the debts alleged in SOR 1.d, g, i, j, k, l, m, and n have been settled with the credit companies. (TR. 18, AX A) The history shows a recurring \$309 fee to the company, but does not indicate what payment or settlement was made to the account alleged in the SOR. (TR. 33) Applicant submitted the same payment history post hearing and marked various accounts that supposedly relate to the settlement of the SOR delinquent debts. (AX K) Applicant stated that the names do not correspond to the SOR accounts as the accounts were sold to various collection agencies. (AX L) There is no indication that the accounts have been fully settled.

As to SOR 1.f, Applicant submitted documentation that the account is paid in full for \$563. (AX B)

The delinquent account alleged in SOR 1.h is unpaid, but Applicant stated that she would settle the account after the hearing. (Tr. 20) She did not provide any support for this assertion.

Applicant admitted that the account alleged in SOR 1.e is unresolved. She learned the debt was charged off and she states that she thought that meant it was zeroed out. (Tr. 20) She paid taxes on it but did not pay the debt. She has not contacted the creditor. She also noted that the statute of limitation is five years on this debt and she had to determine whether it would make sense to take care of it. (Tr. 34)

Applicant currently earns \$141,000. Her husband also works and earns about \$105,000. She has about \$15,000 in her 401(k) account. She follows a budget. There is nothing in the record to reflect any financial counseling. She did not provide the amount of her net monthly remainder.

Personal Conduct

Sometime in 2010, Applicant volunteered to hold the position of treasurer of her daughter's Girl Scout troop. She admits that the time was quite stressful due to the reduced income that she and her husband had and the delinquent debts they were acquiring. She noted that buying groceries was difficult. (Tr. 22) She decided to "borrow" money from the Girl Scout fund so that she could pay for personal expenses. She wrote checks to herself to cover various personal expenses. Applicant stressed that she would replace the money in the account, but she could not always replace the full amount. She emphasized that no one was going to get hurt, and that by putting the money back she was causing no harm. (Tr. 22)

Applicant continued to "borrow" money from the Girl Scout fund for about one year. She emphasized that the money was always in the account when the troop needed money. Applicant explained that due to laziness she did not deposit sufficient

income at the end of the year to cover the checks that she had written. She felt compelled to falsify the financial documents. The account lapsed when there was a negative balance due to fees and interest charges. The bank closed the account.

When the troop decided to disband, Applicant had to turn the checking account over to the next troop. (Tr. 23) At that time she disclosed that she had used the troop money for personal use and had written checks. Also, at that time Applicant owed money on an outstanding check. When the issue reached the administrative level of the Girl Scouts, it was decided that charges of fraud would not be filed if Applicant would confirm in writing her wrongdoings and agree to never participate in any official role with the Girl Scouts. Applicant also had to resign from her position as President of the Parents' Association at her daughter's school. The principal had learned about the situation with the Girl Scout accounts and advised Applicant to relinquish her duties. (Tr. 26)

Applicant realizes that she made a bad decision. She knows that what she did was wrong. She is sorry and believes that it will not happen again. (Tr. 27) In 2013, she removed her children from private school. (Tr. 36) She believes she has paid the consequences for the behavior.

Applicant did not disclose the information concerning the theft and the fraudulent documents on her security clearance application. She also did not disclose anything when speaking to the investigator during her first subject interview. (GX 2) Applicant reasoned that the security clearance application is fairly black and white and that because there was no prosecution, she saw no need to list it or disclose it. (TR. 61) Her reasoning was also based on the premise that she did not think it was appropriate. She is a human being and people make mistakes. (Tr. 64) During a second interview in December 2013, Applicant was confronted with the information concerning the fraudulent financial reporting behavior and the theft from the Girl Scout account. (GX 2) She admitted that the behavior went on for about a year. Applicant has not reported this adverse information to her current employer because she does not believe they need to know. (Tr. 76) She maintains she made a mistake and has been adequately punished. Applicant's character references do not know about the Girl Scout incident.

Applicant submitted several letters from her former employer concerning her stellar achievements. She was awarded the Exception Achievement Award in Customer Service for 2013. She is praised for her outstanding talents. (AX E, H)

Applicant's current employer presented her with the 2013 President's Award. She is acknowledged by her employer for her accepting and surviving a challenging assignment. She is commended for her dedication, hard work, and outstanding contributions. (AX D)

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions. These 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. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. 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. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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." ⁴ "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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;

(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 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 a person may not properly safeguard protected information.

In this case AG ¶ 16(d) applies. Applicant admits that she falsified financial statements and wrote personal checks from the Girl Scout fund account. At the time, she was the treasurer of the troop. She continued this behavior for almost a year. When she neglected to keep the required amount of money in the account, the bank closed the account. Applicant did not disclose her behavior until she had to transfer materials to the next troop leader. She was not prosecuted because she acknowledged her behavior and agreed to resign. Applicant believes she made a mistake and has suffered enough humiliation. She did not disclose the incident during her first subject interview with OPM. It was not until she was confronted that she acknowledged the behavior. At the hearing, she stated she did not think that it was relevant and that she

⁶ *Id.*

was not asked directly so she never disclosed it. Applicant has not told her employer about the fraudulent actions.

Applicant's explanations do not persuade me that she is reliable, trustworthy, or has met her burden to mitigate the personal conduct concerns. After considering the mitigating factors, Applicant has not mitigated the personal conduct security concerns under Guideline E. She has not acknowledged that it was relevant to her security trustworthiness. I find this leaves me with doubts about her eligibility for a security clearance. Any doubts must be resolved in favor of the Government.

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted that she did not pay her taxes for the years in question. Her credit report confirms her delinquent debts. She admitted that she wrote personal checks to herself from the Girl Scout fund when she was the treasurer. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. FC DC AG ¶ 19(d) (deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust) applies. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant's unpaid taxes continued until 2013. She has an agreement to pay them. However, she chose not to resolve a debt based on the fact that it might be removed from her credit report due to length of time. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

Financial Considerations Mitigating Condition (FC MC) 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 in part. Applicant and her husband experienced unemployment and reduced

income which caused the financial difficulty in 2009. She worked with the IRS and retained a company to settle her debts, which is laudable. However, she chose to take money from the Girl Scout fund to supplement her lack of income. I cannot find that she acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant as noted above took steps to arrange payments with the IRS and to settle some debts. She has not addressed all the debts, but is in the process. FC MC 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) applies in part.

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 an 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) 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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 36 years old. She is an educated woman. This is her first application for a security clearance. She has been with her current employer since 2010. She has great skills and has received recognition by her employers.

Applicant and her husband became unemployed and entered into financial difficulties. Their priority was to provide for their children, including the \$20,000 tuition for two children. Applicant believed it was justified to "borrow" money from the Girl Scout fund for a period of a year so that she could maintain her family expenses. She admits falsifying financial documents for about a year. She knows she made a mistake but does not believe that she needed to reveal this information to security investigators or her current employer. I find this troubling.

Applicant has initiated good-faith efforts to pay her taxes and settle her other delinquent debts. She provided sufficient information concerning the payment plan with the IRS. The information concerning the settlements is not clear as to the debts referred to in this case. She also chose not to address a debt based on the fact that it might be removed from her credit report with time.

Applicant did not persuade me that she refuted or mitigated the Government's case concerning the personal conduct and financial considerations security concerns. Any doubts must be resolved in the Government's favor. For all these reasons, Applicant has not mitigated the security concerns under personal conduct and financial considerations. Clearance is denied.

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 :	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.o	Against Applicant
Subparagraph 1.p:	For Applicant
Paragraph 2, Guideline :	AGAINST APPLICANT
Subparagraph 2.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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge