



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



In the matter of:)
)
) ISCR Case No. 14-00952
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

11/05/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations, but failed to mitigate the Government’s security concerns under Guideline E, personal conduct. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On April 24, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

On May 27, 2014, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on September 30, 2014. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 3, 2014. I convened the hearing as scheduled on October 22, 2014, by video-conference. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through I, which were admitted into evidence without objection. The record was held open until October 29, 2014, to allow Applicant to submit additional documents, which she did. They were marked as AE J and K and admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on November 3, 2014.

Findings of Fact

Applicant admitted the allegations in ¶¶ 1.a-1.k of the SOR. She denied ¶ 2.a of the SOR. I have incorporated her admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 45 years old. She graduated from high school in 1987. She was married from 1987 to 1989 and has a grown daughter from the marriage. She was again married from 1990 to 1997, and a third marriage in 2005 ended in divorce shortly thereafter.²

Applicant has been employed by an airline as a flight attendant since 1998. She has been on a leave of absence to work with a defense contractor since October 2013. She enlisted in the Army Reserve in 2002. She deployed to Iraq in 2004-2005 for a 12-month period and again in 2007-2008 for another 12-month period. She holds the rank of sergeant (E-5).³

Applicant filed Chapter 13 bankruptcy in 1998. She went through a divorce and was having financial difficulties. She was working three jobs. She chose to file Chapter 13 instead of Chapter 7 because she acknowledged the debts were her responsibility. She complied with the monthly payment plan, paying more than \$11,000 over four years. In October 2002 her debts were discharged.⁴

In 2002, Applicant was arrested and charged with theft of service by check. She was unaware, until she was stopped for a minor traffic infraction, that there was a warrant for her arrest for a 1997 check she wrote with nonsufficient funds in her

¹ Hearing exhibit I is Department Counsel's memorandum.

² Tr. 38.

³ Tr. 32-33, 97, 103-105.

⁴ Tr. 34-40; AE D.

account. The check was for \$33. She stated she never received notice from the bank about the check. She paid the fine and the matter was resolved.⁵

The debt in SOR ¶ 1.b (\$6,242) was a credit card debt. Applicant gave her then fiancé a power of attorney while she was deployed. Although he was authorized to use the card, she learned three months before she returned from her deployment that he was misusing it. She contacted her bank and the credit card company and had him removed from the account. She stated she contacted the creditor to make payment arrangements, but the account had already been charged-off. She was issued an IRS form 1099c, cancellation of debt, which she included with her 2013 federal income tax return.⁶

In 2011, Applicant was in a car accident that was not her fault. She suffered injuries that required surgery, and she was unable to work for approximately a year. She had difficulty paying her bills. She was able to pay her necessities, but got behind with her consumer debt. She had an attorney who pursued a lawsuit against the driver. The attorney was supposed to pay all of her medical bills from the settlement amount. Some of the medical bills were delinquent due to the delay in the settlement payment. The medical debts alleged in SOR ¶¶ 1.e (\$120) and 1.f (\$93) are attributed to the accident and are paid.⁷

The debts in SOR ¶¶ 1.c (\$3,752) and 1.d (\$6,373) are for credit cards to the same creditor. Applicant stated that she was making regular payments for these debts until she was in the car accident and was unable to pay. She was able to arrange a payment plan with the creditor and paid them. She stated the creditor also charged off these debts, and she received a federal income tax form 1099c, cancellation of debt, which was included in her 2012 federal income tax return. Applicant provided documents to show the debts were settled and paid. Her credit report also indicates that the accounts were settled and paid.⁸

The debt in SOR ¶ 1.g (\$696) was a credit card debt that Applicant was unable to pay on time due to the car accident. She settled and paid the account.⁹ The debt in SOR ¶ 1.h (\$1,704) was paid in October 2013. Both debts are listed as resolved on Applicant's credit report.¹⁰

⁵ Tr. 67-69; AE E page 1.

⁶ Tr. 40-47; AE E page 2-3, AE K.

⁷ Tr. 33-34; 54-57, 86-89, 95; AE A pages 17, 21, AE E page 4.

⁸ Tr. 47-54; AE A pages 13-14, AE E pages 6 and 9.

⁹ Tr. 58-65; AE A pages 21-22, 25, AE E page 5.

¹⁰ Tr. 60-65; AE A pages 21-22, 25, AE E page 5.

Applicant did not recognize the debt in SOR ¶ 1.i (\$202). She did not recall ever having an account with this creditor. Regardless, she paid the bill in June 2011 so it would be removed from her credit report. She provided supporting documents.¹¹ The debt in SOR ¶ 1.j (\$1,033) was another credit card debt that Applicant fell behind on after the car accident. The debt is paid.¹²

Applicant completed a security clearance application (SCA) in 2002. Question 33 asked if, in the past seven years, Applicant had filed a petition under any chapter of the bankruptcy code, including Chapter 13. Applicant answered “No.” She also answered “No” to questions that asked if she had delinquencies over 180 days or any current debts. When asked why she did not disclose her 1998 Chapter 13 filing, the 2002 bankruptcy discharge, and her previous delinquent debts, she explained she was told by the recruiter that because she had completed the Chapter 13 payment plan she did not have to disclose it. She acknowledged that she signed and certified under criminal penalty of law that all of the information she provided was true. She explained she was following the recruiter’s advice when she did not disclose her bankruptcy. She was asked by Department Counsel: “So you were willing to abide by [the recruiter’s] advice, turn the page and sign a certification that signaled to you that [if] you provided false information, you might be guilty of a felony that could include imprisonment or [a] fine? You were willing to do that?”¹³ Applicant responded: “Yes, evidently, because I did do that.”¹⁴ She was 33 years old when she completed the SCA. She explained it was a scary environment for her when she completed her SCA. She did disclose her bad check offense, a public intoxication charge from 1997, and two speeding tickets from 1997 and 1998.¹⁵

Applicant completed her most recent SCA on September 12, 2013. Question 26 asked if, in the past seven years, Applicant had any bills or debts turned over to a collection agency; had an account or credit card suspended, charged off, or canceled for failure to pay as agreed; or had been over 120 days delinquent on any debt not previously entered. She answered “No.” Applicant explained at her hearing that on the day she completed the SCA she was very busy. She had a notebook with all of her past debts listed in it. It was the first time she completed the SCA electronically and the Internet kept going down and losing her data, so she had to repeatedly start over. This

¹¹ Tr. 65-66; AE A page 5-6, AE I.

¹² Tr. 66-67; AE E page 7.

¹³ Tr. 81.

¹⁴ Tr. 81-82.

¹⁵ Tr. 78, 115; AE C. Conduct not alleged in the SOR may be considered to assess an applicant’s credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered Applicant’s explanation for why she failed to disclose her bankruptcy on her 2002 SCA, which was not alleged in the SOR, for these limited purposes.

happened numerous times. She stated that each time she started over, she disclosed all of her past delinquent debts. She stated she does not know what happened, but her SCA shows she entered "No" to Question 26. She stated this was a mistake and she does not know why she answered "No." She stated somehow her answer came up "No." She stated she may have gone back and filled in "No" accidentally. The location where she completed the SCA was crowded with people and she did not have ample room to lay out all of her papers. It was a very busy area and there was no privacy. She admitted her financial situation was embarrassing and she did not want to share it with her coworkers. She agreed that she signed the certification under penalty of law that the information she provided was accurate and true.¹⁶

During Applicant's interview with a government investigator she disclosed that she had significant financial setbacks that led to numerous delinquent accounts that were placed for collection. At the time, she indicated to the investigator that she believed most of her accounts were now current or were paid in full, and she had not listed the financial accounts on her SCA because she thought she only had to list currently delinquent or collection accounts, and it was not her intention to be deceptive or dishonest. This explanation to the government investigator is inconsistent with the statement she made at her hearing that she actually listed the accounts each time she attempted to complete the online application, but she must have accidentally filled in "No" and she does not know how the answer came up "No."

In Applicant's Answer to the SOR regarding the falsification allegation she stated:

I admit, when I received your Statement I looked [at] the copy of the e-QIP. I was in shock at my answer. I am not sure why I answered no. That day was very hectic. I had to fill out this form at work. I had no privacy and was very busy. The [I]nternet in our building is not reliable and I had to leave a few times to go and see about issues we were having with vehicles. I filled out these forms maybe 6 times that day. For some reason it would not save previous answers[.] I had to go back several times and fill them out online. When I finished I did not have time to go back and review answers[.] [W]e are 1 [hour time] difference from [our] Office I had to turn these into so I was just in a hurry to get them in. This is my mistake. I thought that I had said yes and that was why the investigator came to talk to me. When I spoke with him I disclosed everything that I remembered. I explained that in August or September time frame before I left [State A] I had gone to [Bank] and had started paying for the identity theft protection which [was] included [in] the credit report for you. I had already started to make payments on smaller debts and working my way to the big ones. I also explained that this was due to the fact of a car accident and I had not worked for approximately a year and this is why I got behind. I was doing everything possible to pay these debts. I was seen a second time [by a] different investigator and showed her the copies I had

¹⁶ Tr. 70.

from Credit Report[.] [S]he wrote all the items down and I signed some papers. I know that everything would be looked at[.] I was not worried because I had no idea I had said no on [the] question.

Applicant was unemployed for a few months at the end of 2012 and early 2013 when the company she worked for merged with another company. She was able to work part-time for a period. She also received unemployment benefits for a period.¹⁷

Applicant owns a home that she rents to a cousin. She is current on the mortgage payments. She recently purchased a 2014 vehicle and is current on the loan payments. Applicant has been paying her mother's mortgage for the past six years and her car payment for approximately the past three years. Applicant is up-to-date on all of her current bills. She has two credit cards, but neither have balances. She has a retirement account and about \$4,100 in savings. She maintains a written budget.¹⁸

Applicant provided a character letter from her former commander and now civilian supervisor. She is described as a key leader and trusted member of the unit. She has impressive technical skills. She can make decisions under pressure. She is an intelligent, motivated, reliable, dedicated and hardworking professional with an outstanding work ethic. Other character letters describe her as honest, compassionate and having a high moral character.¹⁹

Applicant also provided copies of her military evaluations and numerous military awards and letters of recommendation and appreciation, including the Meritorious Service Medal and Army Commendation Medal.²⁰

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 list potentially disqualifying conditions and mitigating conditions, which are 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as

¹⁷ Tr. 96-101.

¹⁸ Tr. 59, 89-95, 102, 107-109.

¹⁹ AE B.

²⁰ AE G, H.

the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn 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, 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 and has the ultimate burden of persuasion to obtain a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18: 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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant had nine delinquent debts that totaled more than \$20,200. She had debts discharged through Chapter 13 bankruptcy in 2002 and in 1997 she wrote a check with nonsufficient funds in her account. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed her early financial problems to a divorce. She filed Chapter 13 bankruptcy and made payments for four years until her debts were discharged in 2002. She again experienced financial problems when she was in a car accident and out of work for a year. She was unable to pay all of her bills while she was recuperating from the accident. Once she reached a financial settlement for her accident, she was able to pay all of her bills. A couple of the debts were charged off and she received cancellation of debt notices and the amounts were included in her federal income tax returns, which she paid. In addition, regarding one debt, her then fiancé misused her credit card while she was deployed. Once she became aware, she removed him as an authorized user. The debt was charged off, and she received a cancellation of debt notification from the IRS. The debt was included with her federal tax returns and she paid her tax liability. Applicant was unaware of the theft by services charge until she

was stopped for a traffic infraction. The offense occurred in 1997. She resolved the issue.

AG ¶ 20(a) is established because she has resolved all of her delinquent debts and the theft by services offense happened more than 14 years ago and is unlikely to recur. The conditions that caused the financial problems as noted above were beyond her control. Applicant acted responsibly when she completed four years of payments for her Chapter 13 bankruptcy, and she paid her delinquent debts after she received the legal settlement for her injuries due to a car accident. AG ¶ 20(b) applies.

Applicant has made a good-faith effort to resolve her debts and there are clear indications her financial problems are under control and resolved. AG ¶¶ 20(c) and, 20(d) apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for 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. 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. I find the following 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 completed two SCAs in the past. The first one was in 2002 shortly after completing her Chapter 13 payment plan and the second in 2013. Applicant stated she was told by her recruiter not to include her bankruptcy on her 2002 SCA, so she complied. On her 2013 SCA, she failed to disclose she had past delinquent debts. I considered her testimony and explanations. I also considered her statement to the government investigator. She told the investigator she did not think she had to include her past delinquent debts because most of them were now current. This explanation contradicts her testimony. She stated she thought she included her delinquent debts on the SCA, and somehow the electronic SCA kept dumping her information. She explained that each time she went back and included her past delinquent debts. Then somehow she overlooked her final submission where she mistakenly answered "No" to the financial delinquency questions. She then certified and swore her answers were

true, but she failed to review the final version of the SCA where she must have mistakenly answered “no” to the question. Applicant’s testimony was not credible. I find she deliberately concealed her past financial problems. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(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.

I have considered all of the mitigating conditions and conclude none apply. Applicant deliberately failed to disclose the required information. She did not promptly make a good-faith effort to correct her omissions. Her omissions are not minor, but rather are serious. There is insufficient evidence to conclude that there were unique circumstances surrounding her omissions. Her deliberate concealment and falsification cast doubt on her reliability, trustworthiness, and good judgment.

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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 45 years old. She experienced financial problems due to a divorce and later due to a car accident. She complied with the terms of her Chapter 13 bankruptcy payment plan, and her debts were discharged. She had difficulty paying her bills when she was out of work due to a car accident. Once she received the settlement payment for the accident, she paid her delinquent debts. Applicant successfully mitigated the financial considerations security concerns. Applicant was aware of her financial difficulties, but deliberately failed to disclose them on her 2013 SCA. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the personal conduct guideline.

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 F:	FOR APPLICANT
Subparagraphs 1.a-1.k:	For Applicant
Paragraph 2, Guideline E:	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. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge