



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



In the matter of:)	
)	
REDACTED ¹)	ISCR Case No. 14-01905
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: Glenn Adams, Personal Representative

11/21/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant, a highly successful businesswoman and domestic violence survivor, mitigated the security concerns raised in the Statement of Reasons (SOR). She established that the largest debts listed in the SOR were the legal obligations of her former husband. Despite not being responsible for these debts, she satisfied a sizeable \$30,000 debt. She is resolving the other SOR debts. Her financial situation is under control and improving. She did not falsify her security clearance application and refuted the false allegations that her estranged husband made during the security clearance investigation. She has a demonstrated track record of handling and safeguarding classified information and of upholding the highest ethical standards demanded from a federal contractor granted a security clearance. Applicant met her burden in establishing her eligibility for continued access to classified information. Clearance is granted.

History of the Case

On September 24, 2014, the Department of Defense (DOD) sent Applicant a SOR, alleging that her conduct and circumstances raised security concerns under the

¹ When Applicant submitted her security clearance application, she was going by her married name. She has returned to using her maiden name. For completeness, both names are reflected in the case caption.

financial considerations, criminal conduct, and personal conduct guidelines.² Applicant answered the SOR and requested a hearing to establish her eligibility for continued access to classified information.

On June 2, 2015, Department Counsel notified the hearing office that the Government was ready to proceed. The hearing was originally scheduled for July 29, 2015, but Applicant moved for a continuance because of medical issues. I granted Applicant's request for a continuance, and the hearing was rescheduled for and held on August 14, 2015.³

At hearing, Department Counsel offered exhibits (Ex.) 1 – 5. Applicant testified, called witnesses, and offered Ex. A – R. She requested additional time post-hearing to supplement the record. I granted her request and she timely submitted Ex. S, which contains four attachments that have been marked Ex. S1 – S4.⁴ All exhibits were admitted into evidence without objection. The transcript (Tr.) was received on August 24, 2015, and the record closed on September 21, 2015.

Findings of Fact

Applicant, who has held a security clearance since 2008, is the chief executive officer (CEO) of a small business that does work as a defense contractor. At its height, Applicant's business employed some 30 individuals. Her business took a downturn due to cutbacks in funding occasioned by sequestration. Applicant forcefully, passionately, and credibly testified about her commitment to the warfighter. Her life goal and the focus of her work is to improve the ability of U.S. military service members to effectively carry out the fight against the enemy and return to their loved ones in one piece. She has, in the past, provided her company's unique capabilities to fix issues with DOD systems at no cost to the Government – issues that a larger contractor managing the project wanted millions more to remedy. (Tr. at 84, 103-105)

Applicant's integrity, reliability, trustworthiness, and good judgment were vouched for by numerous individuals, both in and out of government. (Tr. at 36-80; Ex. A1 – A11) One of the witnesses, a former member of the senior executive service, testified that he was personally aware of Applicant flatly turning down a government employee's attempt to proposition her in return for "favorable treatment on a contract issue." (Tr. at 50) This same witness has observed Applicant properly handle sensitive information. (Tr. at 53) A business associate, who has provided contract support to the U.S. Navy for over 20 years, testified that, for the past seven years, Applicant has provided support to his

² This action was taken under Executive Order (E.O.) 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 implemented by DOD on September 1, 2006.

³ See Hearing Exhibit (Hx.) I, case management order and prehearing scheduling correspondence. Hx. II and III are the parties' respective exhibit lists (both documents were renumbered following the hearing).

⁴ Ex. B references a divorce decree and property settlement that Applicant submitted post-hearing, and were admitted as Ex. S2 and S3.

company on “many contracts, [involving] high-level security contracts.” He described Applicant’s performance on these high-level security contracts as “always delivered on time, within budget, [and] always professional.” (Tr. at 59)

In contrast to the successes Applicant has enjoyed in her professional life, Applicant’s good friend of nearly 20 years testified that she has not been as fortunate in her personal life. (Tr. at 38-39) Applicant has been married three times. She described her first marriage as a rash decision made when she was young. She was “right out of college” and married a “drummer” who was always out “on the road.” (Tr. at 106)

Applicant’s second marriage fell apart because “He just didn’t like the lifestyle of me being in this secured world and what it called for.” (Tr. at 107) They divorced in 2004 and, as part of the divorce, Applicant’s ex-husband was “solely responsible for any and all payments of federal or state tax liabilities arising from the filing of the parties joint tax returns” during the marriage. (Ex. S3 at 5) Applicant’s ex-husband did not pay the federal or state tax liabilities. The IRS filed a \$30,000 tax lien against Applicant and her ex-husband. Once Applicant became aware of the lien, she paid the outstanding federal tax liability and the lien was released. Her ex-husband acknowledges the federal tax debt was his responsibility. State tax authorities filed a \$6,500 lien that Applicant’s ex-husband also acknowledges is his sole legal responsibility. He is in the process of resolving this debt. The federal and state tax liens are referenced in SOR 1.a and 1.b. (Tr. at 86-88, 108-109; Ex. C; Ex. S; Ex. S4)

Applicant’s SOR lists several other delinquent debts, the majority of which are for unreimbursed medical expenses and total approximately \$3,000. Applicant established that the two non-medical debts in 1.c and 1.d, which together total approximately \$2,400, belong to her ex-husband. She is resolving the medical debts listed at 1.e - 1.i. She was unaware of these minor debts until recently because the bills were going to her old marital residence. With the assistance of her long-time friend, Applicant has gathered the information to resolve these debts and paid other debts not listed in the SOR that were incurred after the downturn in her business. Applicant submitted a recent credit report that reflects all of her accounts are in good standing and she “pays as agreed.” This report is consistent with the favorable financial information reflected on the June 2015 credit report submitted by the Government. Applicant has taken control of her finances and is in the process of rebuilding her savings. (Tr. at 38-43, 88-93, 108-110; Ex. 5; Ex. D – J; Ex. S)

In 2005, shortly after Applicant’s second marriage ended in divorce, she was arrested and convicted of driving under the influence (DUI). As this was Applicant’s one and only criminal offense, she was sentenced to a suspended 60-day jail sentence, a fine and court costs, and the suspension of her driver’s license for 12 months. She successfully completed all the terms of her sentence and has not been involved in any other criminal incident, alcohol or otherwise. Those who have known Applicant for years testified that they have not observed her abuse alcohol, and opined that she does not have an alcohol problem. (Tr. at 44, 50, 78, 93-98, 111; Ex. 2; Ex. M; Ex. S)

Applicant disclosed her 2005 DUI on her initial security clearance application (SCA or SF86). She fully discussed it and other aspects of her background with investigators following the submission of her initial SCA. Following the investigation, Applicant was granted a clearance. See Tr. at 97-98, Department Counsel stipulates that Applicant “did outline her DUI conviction in her January 2008 SF86.”

Applicant submitted her current security clearance application in November 2013. She tried listing her 2005 DUI on the current application, but due to technical issues with the form was unable to list it. She or her FSO was told by the JPAS helpdesk that Applicant should not include the information regarding the DUI due to its age. Applicant strongly denies that she deliberately omitted the information. Her testimony was credible and corroborated by her FSO. (Tr. at 93-98, 101; Ex. S1)

Applicant and her current husband married in 2006. He physically beat her throughout the marriage. Applicant is receiving medical care for the serious injuries she sustained. She didn't leave the marriage in order to protect her stepchildren. In 2012, once her stepchildren were old enough and out of the home, Applicant separated from her husband. They are in the process of getting a divorce. Applicant is aware that her husband has made allegations that she abused him in an attempt to shield from public scrutiny his criminal conduct. For instance, her husband complained that she threatened to shoot him. Applicant explained that the only time she threatened her husband with a gun was in response to a savage beating that he inflicted on her. She was momentarily able to get away from his grasp, grabbed an unloaded gun they owned, and pointed the gun at his leg saying “it's enough, just leave me alone”. (Tr. at 114) She has not been arrested, charged, or found responsible by any court for committing acts of domestic violence against her husband. (Tr. at 78, 98-115; Ex 1 at 17-18, 37)

Applicant provided evidence refuting other unsubstantiated complaints of abuse made by her husband during the course of the current security clearance investigation, to include that she had been arrested and charged with committing assault and battery on a family member. At hearing, Department Counsel moved and I granted the Government's request to withdraw the allegations pertaining to these unsubstantiated allegations made by Applicant's husband. (Tr. at 17-18; Ex. L)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865, § 2.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

An administrative judge must ensure that due process proceedings are conducted “in a fair, timely and orderly manner.” Directive ¶ E3.1.10. Judges are required to make certain that an applicant “received fair notice of the issues raised, had a reasonable opportunity to litigate those issues, and was not subjected to unfair surprise.” ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014)

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.⁵

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. 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 an 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.

Analysis

Guideline F, Financial Considerations

The potential security concern under this guideline is explained at 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.

⁵ See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”).

Department Counsel established a *prima facie* case of disqualification under this guideline. The Government's evidence raised the disqualifying conditions at AG ¶¶ 19(a), "inability or unwillingness to satisfy debts;" and 19(c), "a history of not meeting financial obligations."

Applicant mitigated the financial considerations security concerns. She established that the largest debts listed in the SOR were the legal obligations of her former husband. Notwithstanding her ex-husband's responsibility for these debts, Applicant paid a sizeable federal tax debt that he should have paid per their settlement agreement. She is resolving the remaining SOR debts, some of which are medical debts related to the domestic abuse she suffered at the hands of her current husband. With the assistance of her long-time friend, who has provided her financial advice, Applicant has established a track record of debt repayment and regained control of her finances. Applicant established the following mitigating conditions:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(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;

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;

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

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt and provides documented proof to substantiate the basis of the dispute.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the existence of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to this nation's secrets.⁶ Applicant met her burden.

⁶ ISCR Case 07-10310 (App. Bd. Jul. 30, 2008); ISR Case No. 07-06482 (App. Bd. May 21, 2008)

Guideline J, Criminal Conduct

The SOR alleges, under the criminal conduct guideline, Applicant's 2005 DUI and purported act of domestic violence against her husband using a handgun. The security concern regarding criminal conduct is explained at AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Applicant refuted the domestic violence allegation alleged at SOR 2.c. However, her 2005 DUI, referenced at SOR 2.a, does raise the criminal conduct concern and the following disqualifying conditions:

AG ¶ 31(a): a single serious crime or multiple lesser offenses; and

AG ¶ 31(c): allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant mitigated the criminal conduct security concerns. The DUI occurred shortly after the dissolution of her second marriage. She complied with the terms of her sentence and no credible evidence was submitted that she has engaged in other criminal conduct in the past 10 years (or, suffers from a drinking problem that may lead to further criminal activity). She refuted the allegations of criminal misconduct made by her estranged husband during the course of the current security clearance investigation. Her testimony regarding the physical abuse she suffered at the hands of her husband was credible and corroborated by witness testimony. She has been separated from her husband for three years now and her life appears to be returning to a relative state of normalcy. She has a demonstrated track record of positive contributions to the defense industry and in handling sensitive information. Accordingly, I find the following mitigating conditions apply:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 32(c): evidence that that person did not commit the offense; and

AG ¶ 32(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.

Guideline E, Personal Conduct

The SOR cross-alleges Applicant's DUI and the unfounded allegations of domestic violence under Guideline E. The SOR also alleges that Applicant deliberately falsified her security clearance application. The personal conduct security concern is set forth at 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.

Applicant, as explained above, refuted the allegations that she committed acts of domestic violence against her husband. She also refuted the falsification allegation. The omission of material information from a security clearance application standing alone is not enough to establish that an individual intentionally falsified their application. Instead, an administrative judge must examine the facts and circumstances surrounding the omission to determine an individual's true intent.⁷ Applicant's testimony denying the allegation was credible and corroborated by her FSO. She voluntarily provided the information regarding her DUI on her initial security clearance application, when the adverse event was far more recent and, thus, more likely to raise concerns about her security clearance eligibility. As for the 2005 DUI, for reasons similar to that set forth under Guideline J, I find that Applicant mitigated concerns raised by such conduct. Specifically, I find that Applicant established the following mitigating conditions:

AG ¶ 17(b): the . . . omission . . . was caused or significantly contributed to by improper or inadequate advice of authorized personnel;

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

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

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the

⁷ See generally ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005).

nine factors listed at AG ¶ 2(a). Applicant's past financial problems and other matters that initially gave rise to security concerns were a consequence of her failed marriages. She has moved on from her recent, abusive relationship of nearly six years and is putting her professional and personal life back in order to help provide for the safety and security of those on the front lines in an ever changing security environment. She has demonstrated a track record of upholding the highest standards of ethical behavior demanded from federal contractors granted access to classified information. Overall, the record evidence leaves me with no questions or doubts about her eligibility for continued access to classified information.⁸

Furthermore, I find that Applicant received fair and reasonable notice of the security concerns at issue. She also had a reasonable opportunity to respond to the security concerns and to challenge the evidence presented by the Government. She met her burden in mitigating the security concerns at issue and established that it is clearly consistent with the national interest that she be granted a security clearance.

Formal Findings

Paragraph 1, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraphs 1.a – 1.i:	For Applicant
Paragraph 2, Guideline J (Criminal Conduct):	FOR APPLICANT
Subparagraphs 2.a and 2.c:	For Applicant
Subparagraph 2.b:	Withdrawn
Paragraph 3, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraphs 3.a and 3.c:	For Applicant
Subparagraph 3.b:	Withdrawn

Conclusion

In light of the record evidence, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

⁸ ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) ("Security clearance determinations are not an exact science, but rather predicative judgments about a person's security suitability in light of that person's past conduct and present circumstances.") (citing, *Egan*, 484 U.S. at 528-529).