

KEYWORD: Personal Conduct; Criminal Conduct; Financial

DIGEST: Applicant refuted allegations she intentionally falsified answers to questions on her security clearance application regarding her employment record, security clearance history, and financial delinquencies. The security concern based on her history of delinquent debts is mitigated by her good-faith efforts to resolve them. Clearance is granted.

CASENO: 03-25388.h1

DATE: 02/08/2006

DATE: February 8, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25388

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant refuted allegations she intentionally falsified answers to questions on her security clearance application regarding her employment record, security clearance history, and financial delinquencies. The security concern based on her history of delinquent debts is mitigated by her good-faith efforts to resolve them. Clearance is granted.

STATEMENT OF THE CASE

On February 11, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guidelines E (Personal Conduct), J (Criminal Conduct), and F (Financial Considerations). Under Guideline E, it alleges Applicant falsified answers on her SF 86 pertaining to her employment record (§§ 1.a. and 1.c.), her security clearance history (§§ 1.b. and 1.d.), and her financial delinquencies (§§ 1.e. and 1.f.). Under Guideline J, it alleges violations of 18 U.S.C. § 1001, based on the conduct alleged under Guideline E. Under Guideline F, it alleges seven delinquent debts totaling about \$11,399 (§§ 3.a.-3.g.).

Applicant answered the SOR in writing in an undated document. She denied the allegations under Guidelines E and J. In response to the allegations under Guideline J, she disputed one debt (§ 3.a.), denied two (§§ 3.b. and 3.c.), and asserted four had been resolved (§§ 3.c.-3.g.). She requested a hearing. The case was assigned to me on December 8, 2005, and heard on January 12, 2006 as scheduled. I kept the record open until January 30, 2006, to enable Applicant to submit additional documentary evidence. I received her additional evidence on January 17, 2006, and it is incorporated in the record as Applicant's Exhibit (AX) L. DOHA received the transcript (Tr.) on January 19, 2006.

FINDINGS OF FACT

Applicant's admissions in her answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 46-year-old network engineer for a defense contractor. Except for one brief period, she has worked for defense contractors since May 1991. She first received a security clearance in June 1994. She was married in September 1988 and divorced in June 1997. She has one child whom she raised as a single parent.⁽¹⁾

Applicant lived in a rented apartment from January 1992 until May 1996. She had a 12-month lease with a provision allowing her to hold over as a month-to-month tenant and to vacate with a 30-day notice.⁽²⁾ In May 31, 1996, she moved out and immediately moved into her new home. She did not comply with the 30-day notice requirement, and she was aware she might be liable for one month's rent.⁽³⁾ The manager demanded four month's rent (SOR ¶ 3.a.).⁽⁴⁾ After a lengthy dispute, Applicant and the apartment manager negotiated a settlement, and on March 5, 2005, Applicant paid the agreed amount in full.⁽⁵⁾

In July 1997, a judgment in the amount of \$668.22 for a medical bill was entered against Applicant. (SOR ¶ 3.b.).⁽⁶⁾ In her answer to the SOR, Applicant stated she was unaware of the judgment until long after it was entered against her. She was involved in a serious accident in 1993, but she believed her attorney had settled all medical bills arising from the accident. She requested information from the doctor's office, but they were unable to find any records supporting the amount claimed.

In October 1997, Applicant was hired as a network administrator by a contractor for a government agency. In January 1999, she was accused of giving a classified document to an unauthorized person. She denied the allegation. Although it appears her employer believed her, she was denied access to the government agency's facility and unable to work on her employer's contract with that agency.⁽⁷⁾ On January 25, 1999, she was notified her employment was terminated because she could not comply with the condition of her contract requiring her to secure and maintain a security clearance.⁽⁸⁾

Applicant believed she had been wrongfully terminated, and she retained an attorney to contest the revocation of her security clearance.⁽⁹⁾ In response to the attorney's request for all documents pertaining to the revocation of her clearance, the government agency responded that her clearance had not been revoked, but her clearance obtained by her predecessor employer had lapsed and had not been renewed by her then-current employer.⁽¹⁰⁾

Applicant worked in the private sector for a short time as a software tester, and then was hired by another federal contractor. ⁽¹¹⁾ In August 1999, Applicant's employer told her she needed a periodic reinvestigation of her eligibility for continuing to hold a security clearance. She sought advice from her security manager and her attorney regarding disclosure of her termination of employment by her former employer. She was advised to answer "no" to question 22 on the SF 86, asking whether she was fired or left employment under unfavorable circumstances, and to explain the circumstances under which she was terminated. ⁽¹²⁾

On September 28, 1999, Applicant executed a handwritten SF 86. She answered "no" to question 22 and wrote the following comments in the "Continuation Space" at the end of the form: "Item #22 Left [former employer] at [government agency's] request that I not work in [the agency's] controlled space. [Former employer] did not have suitable position available to place me in at that time. An attorney was retained to investigate the matter." ⁽¹³⁾ The electronically transmitted SF 86 dated October 5, 1999, reflected a negative answer "no" to the comparable question (question 20), and a negative answer to question 43, asking if Applicant had an additional remarks to enter. ⁽¹⁴⁾

On March 9, 2001, Applicant submitted an electronic SF 86 to her security manager, with the same handwritten explanation as contained on the handwritten SF 86 executed in September 1999. ⁽¹⁵⁾ Her explanation was handwritten because the computer program, as it existed at that time, contained program errors that would not permit entry of explanatory comments. ⁽¹⁶⁾ An electronically transmitted SF 86 dated March 20, 2001, contained the same negative answers, but without the explanatory comments. ⁽¹⁷⁾

The SF 86 dated March 20, 2001, also contained negative answers to question 38 (debts more than 180 days delinquent during past seven years), and question 39 (current debts more than 90 days delinquent). Applicant's credit report dated March 26, 2003, reflected a delinquent credit card account (SOR ¶ 3.c.), and an unpaid cell phone bill (¶ 3.d.). ⁽¹⁸⁾ Her credit report dated January 11, 2005, reflected a collection account originated from a department store charge account (¶ 3.e.) and two delinquent credit card accounts (¶¶ 3.f. and 3.g.). ⁽¹⁹⁾ She disputed the credit card debt alleged in ¶ 3.c., stating she had never had a credit card from that alleged creditor. The credit bureau resolved the dispute in her favor and removed it from her credit report. ⁽²⁰⁾ Applicant's credit report dated October 26, 2005 shows the debt alleged in ¶ 3.g. was settled in January 2005; the debts alleged in ¶¶ 3.d. and 3.e. were settled in March 2005; and the debt alleged in ¶ 3.f. was settled in June 2005. ⁽²¹⁾

In her answer to the SOR, Applicant denied falsifying her answers to questions 38 and 39, asserting none of the delinquent debts listed on the credit reports were more than 90 days delinquent at the time she executed the SF 86. Her credit reports support her denial, because they show her debts did not begin to be reported as delinquent until after she executed her SF 86.

Applicant submitted four letters of appreciation and commendation from several government officials, attesting to her performance before she was terminated by her former employer. The letters attest to her pleasant personality, expertise, and dedication. ⁽²²⁾ A coworker in her current job describes her as "a woman of great integrity" who enjoys the utmost respect of trust of her colleagues. ⁽²³⁾

Applicant serves on her town council. The town mayor, who has known her for ten years, regards her as very honest, diligent, committed, and an excellent parent. ⁽²⁴⁾

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President

and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline E: Personal Conduct

Under this guideline, conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1. A disqualifying condition (DC 1) may arise from "[r]eliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances." Directive ¶ E2.A5.1.2.1. The allegation in SOR ¶ 1.b. was based on information from a former employer that Applicant's security clearance had been revoked by a government agency. Applicant presented documentation from that agency establishing her clearance had never been revoked but had been allowed to lapse by her employer. I conclude Applicant has refuted the allegation in SOR ¶ 1.b.

A disqualifying condition (DC 2) also may apply where there has been a deliberate omission or falsification of relevant and material facts from any personal security questionnaire. Directive ¶ E2.A5.1.2.2.. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

The evidence shows Applicant was advised by her attorney and facility security manager to answer "no" to the question about her employment record and to explain the circumstances under which she lost her job. She complied with that advice, but her explanations could not be entered on the electronic SF 86. She manually supplied her security manager with her explanatory comments. I conclude she has refuted the allegations of intentional falsification in SOR ¶¶ 1.a., 1.c., and 1.d.

In her answer to the SOR, Applicant denied she was more than 90 days delinquent on any debts when she executed her SF 86 in March 2001. Her credit reports support her denial, because they show her debts did not begin to be reported as delinquent until after March 2001. She disclosed the unpaid judgment alleged in SOR ¶ 3.b. on her SF 86. I am satisfied she did not intentionally falsify her answers regarding delinquent debts. I conclude she has refuted the allegations under SOR ¶¶ 1.e. and 1.f.

Guideline J: (Criminal Conduct)

Under this guideline, a single serious offense can raise a security concern (DC 2). Directive ¶ E2.A10.1.2.2. It is a felony, punishable by a fine or imprisonment for not more than five years, or both, to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan*, 484 U.S. at 527. A deliberately false answer on a security clearance application is a serious crime within the meaning of Guideline J.

The conduct alleged under this guideline is the same conduct alleged under Guideline E. For the reasons stated above under the discussion of Guideline E, I conclude Applicant has refuted the allegations under Guideline J.

Guideline F: (Financial Considerations)

Under this guideline, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information.

Two disqualifying conditions (DC) under this guideline could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶

E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. The evidence of Applicant's delinquent debts alleged in the SOR ¶¶ 3.d.-3.g. establishes DC 1 and DC 3.

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or an isolated incident (MC 2). Directive ¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant had multiple delinquent debts that were only recently resolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions beyond the person's control (MC 3). Directive ¶ E2.A6.1.3.3. Even if Applicant's financial difficulties initially arose due to circumstances beyond her control, they do not necessarily mitigate security concerns unless she acted in a reasonable manner when dealing with her financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003).

Applicant purchased a home in June 1996 and assumed the responsibility for paying the mortgage. She was divorced a year later and became solely responsible for raising her child. She was terminated from her job in January 1999 and incurred legal expenses attempting to contest her termination. She continued to meet most of her financial obligations, but fell behind on the four debts alleged in SOR ¶¶ 3.d.-3.g. Her delinquent debts did not begin to accrue until after she submitted her SF 86 in 2001, two years after her wrongful termination. She did not explain how her various misfortunes ending in 1999 caused her to be fall behind more than two years later. She has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). I conclude she has not carried her burden of establishing MC 3.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

Applicant began rectifying her financial situation when she learned it was a security concern. She resolved her dispute over the debt alleged in SOR ¶ 3.a. She successfully disputed the debt alleged in ¶ 3.b. She paid the debt alleged in ¶ 3.g. before receiving the SOR, and she resolved the remaining three shortly thereafter. She has worked as a dedicated and trustworthy federal contractor for almost 25 years. I am satisfied she resolved her delinquent debts because of her sense of obligation and not merely because her security clearance was at risk. I conclude MC 6 is established.

FORMAL FINDINGS

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Paragraph 2. Guideline J (Criminal Conduct): FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3. Guideline F (Financial): FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

Subparagraph 3.c.: For Applicant

Subparagraph 3.d.: For Applicant

Subparagraph 3.e.: For Applicant

Subparagraph 3.f.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman

Administrative Judge

1. Government Exhibit (GX) 1 at 1, 6, 7, 10; Tr. 84.
2. GX 3 at 11, 15.
3. *Id.* at 2, 5.
4. Tr. 42.
5. AX L at 4.
6. GX 8; GX 9.
7. GX 11.
8. GX 10.
9. GX 13.
10. GX 14 at 2.
11. GX 1 at 3.
12. Tr. 38-39; GX 5 at 2.
13. AX A at 10, 12 (pages 7 and 9 of SF 86).
14. GX 2 at 8, 12.

15. AX H at 11.
16. Tr. 35, 60; AX I at 3.
17. GX 1 at 8, 12.
18. GX 7 at 4, 6.
19. GX 6 at 6-8.
20. Tr. 45; GX 4 at 2; AX K at 1.
21. AX K at 3, 5; *see also* AX J at 6-8.
22. AX D, E, F, and G.
23. AX B.
24. AX C.