

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: In response to two questions on a security clearance application submitted in February 2002, Applicant falsely denied several delinquent debts. Since then, she resolved her financial problems and established a solid record of excellent job performance. Applicant mitigated the security concerns arising from her falsifications. Clearance is granted.

CASENO: 05-14716.h1

DATE: 06/07/2006

DATE: June 7, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-14716

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

In response to two questions on a security clearance application submitted in February 2002, Applicant falsely denied several delinquent debts. Since then, she resolved her financial problems and established a solid record of excellent job performance. Applicant mitigated the security concerns arising from her falsifications. Clearance is granted.

STATEMENT OF THE CASE

On February 28, 2002, Applicant submitted a security clearance application. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On January 19, 2006, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns under the Directive, Guideline E, Personal Conduct, and Guideline J, Criminal Conduct.

Applicant answered the SOR in writing by letter dated February 2, 2006. She elected to have a hearing before an administrative judge.

The case was originally assigned to another judge, but was reassigned to me on April 3, 2006. With the concurrence of Applicant and Department Counsel, I convened the hearing on April 19, 2006. The government introduced Exhibits 1 through 5. Applicant provided Exhibit A and testified on her own behalf. Department Counsel moved to amend ¶ 1.e of the SOR by inserting the words "Security Commission Benefits" after the word "Employment." There being no objection, I granted the motion. DOHA received the final transcript of the hearing (Tr.) on May 3, 2006.

FINDINGS OF FACT

In her Answer to the SOR dated February 7, 2006, Applicant denied the allegations at ¶¶ 1.b(3), 1.b(8), 1.d, 1.e and 2.a, and admitted the remaining factual allegations in the SOR. At the hearing, Applicant explained that she meant to admit that she gave the answers listed, or that certain debts existed, but denied that she intended to mislead or defraud the government. (Tr. at 7-8.) After a complete and thorough review of the evidence in the record, I make the following findings of fact.

Applicant was born in June 1976. (Ex. 1 at 1.) She attended college on an athletic scholarship and obtained a bachelor's degree in 1998 in Computer Information Systems. (Tr. at 19; Ex. 1 at 3.) Applicant was unable to pay all her financial obligations; in October 1998 a \$1,513.00 credit card debt was placed for collection. (SOR, ¶ 1.b(1).)

She began working in October 1998 as a systems administrator for a local company, but was laid-off in July 2000. (Ex. 1 at 5; Tr. at 19.) Applicant applied for and began receiving unemployment compensation. (Tr. at 20.) She fell behind in payments on her existing debts. (Ex. 2 at 3.) In 2000, Applicant had continuing mechanical problems with her vehicle and so she turned it back in to the seller. (Tr. at 47.) The creditor asserted a deficiency of about \$13,820.00. (SOR, ¶ 1.b(2).) She attempted to make arrangements to resolve the debt but the creditor would not agree. (Tr. at 47.) Applicant made some payments thereafter. (Tr. at 48.)

Applicant moved in with her fiancé, a member of the U.S. armed forces in 2000; a short time later, they moved to a less-expensive apartment. (Tr. at 20; Ex. 1 at 2.) Applicant continued to receive unemployment compensation benefits. (*Id.*) The plan required Applicant to call a certain number each week and enter a code number to certify that she was still eligible for the benefits. (Tr. at 35-36.)

In January 2001, Applicant began working for an agency that provided temporary staffing. (Ex. 1 at 5; Tr. at 20.) According to Applicant, she stopped collecting the unemployment benefits at that time. (Tr. at 20.) She claimed that, unbeknownst to her, her fiancé continued to call in the code numbers and continued to receive the benefits. (Tr. at 21, 42-43.) Applicant married her fiancé in September 2001. (Ex. 1 at 6.)

Applicant and her husband had joint credit card accounts. (Tr. at 31.) According to Applicant, her husband took care of paying the bills. (Tr. at 31.) During this time, Applicant and her husband fell further behind on their debts. (Ex. 2 at 3.) They accrued more than ten delinquent debts to credit card companies, retailers, and utilities totaling more than \$6,900.00. (SOR, ¶¶ 1.b(3)-(12); Ex. 3.) They also did not pay federal income taxes for the year 2000, or state income taxes in 2002. (Ex. 2 at 3-4.) Applicant claimed she was not aware that the debts were not paid. (Tr. at 31.)

Applicant's husband was injured on duty and was transferred to another base for rehabilitation at a military hospital. (Tr. at 22.) She moved there as well, and sought employment in the local area. At first, it was a temporary assignment; later he was permanently reassigned to the new base. (Tr. at 26.)

In January 2001, the state filed criminal charges against Applicant for Misrepresentations to Obtain Employment Security Benefits. (Ex. 5.) Attempts to serve the summonses were unsuccessful. (*Id.*)

In February 2002, she obtained her current position with a publishing company, working as a data acquisition specialist. (Ex. 1 at 4.) She also obtained a second job with a defense contractor. (Tr. at 27.) On February 28, 2002, she completed an SF 86, Security Clearance Application, by filling out the form on a computer in the public library. (Ex. 1 at 1; Tr. at 22, 29.) Question 35 on the SF 86 asked whether Applicant had any property repossessed within the previous seven years. (Ex. 1 at 11.) Applicant answered "No." (*Id.*) She did not report the repossession of her automobile in 2000.

Question 38 on the SF 86 inquired whether Applicant had been over 180 days delinquent on any debt within the preceding seven years. (Ex. 1 at 11.) Applicant answered, "No." Question 39 asked whether Applicant was then over 90 days delinquent on any debt. (Ex. 1 at 11.) Applicant answered, "No." Question 26 on the SF 86 inquired whether Applicant had been arrested for, charged with, or convicted of any offenses within the preceding seven years. (Ex. 1 at 9.) Applicant answered "No." (*Id.*)

In July 2002, Applicant separated from her husband. (Ex. 2 at 3.) The divorce was final in November 2003. (Tr. at 24.) She continued working two jobs to improve her financial situation. (Tr. at 23.) She indicated that she became aware of unpaid debts only after the separation. (Tr. at 32.)

In May 2003, a security investigator interviewed Applicant about her clearance application. (Ex. 2 at 6.) According to Applicant, that was the first time she learned that criminal charges had been filed against her for fraudulent receipt of unemployment benefits. (Tr. at 21.) She informed the investigator she intended to file for personal bankruptcy to discharge overdue debts. (Ex. 2 at 4, 6.)

Applicant retained an attorney and filed for bankruptcy under Chapter 7 in 2003. (Tr. at 23.) The bankruptcy was discharged in October 2003. (Tr. at 39; Ex. 4 at 1.) The court did not discharge her student loans or tax debts. (Tr. at 39-40.)

At the hearing Applicant testified she was unaware that criminal charges had been filed against her for making false statements to obtain unemployment compensation benefits. (Tr. at 21.) She presented documents showing those charges

were dismissed in February 2006 upon payment of restitution. (Ex. A.)

Regarding the completion of the SF 86, Applicant testified that when she filled out the form, she was not aware of all the debts that were 90 or 180 days delinquent. (Tr. at 22.) She also indicated that it was necessary to include addresses, telephone numbers and account numbers for the delinquent debts in order to complete the electronic form-without all the required information, the database would not allow the user to continue. (Tr. at 22.) She stated she did not have all the necessary information so she answered "No," intending to come back and add it later. (Tr. at 22.) However, she testified that once she went past a question, there was no way to enter additional information. (Tr. at 22.) Applicant explained that she was able to get most of the other detailed information (names, addresses, telephone numbers) required for the application from her address book, or she used her cell phone to call for the information. (Tr. at 50.)

Applicant indicated she has continued to work two jobs to support herself and her mother. (Tr. at 23.) She attended financial counseling classes to learn about keeping her debts at manageable levels. (*Id.*) She has had no late payments since her bankruptcy (Tr. at 23), and paid off the delinquent state and federal tax debts. (Tr. at 40.) She started a 401K plan and opened Individual Retirement Accounts (IRAs). (Tr. at 23.) She also completed a Master's degree program. (Tr. at 34.)

Applicant's supervisor testified that she was trustworthy, dependable, and an excellent employee. (Tr. at 55.) She believed Applicant possessed the qualities required to hold a security clearance. (Tr. at 60.) A friend of Applicant also testified that she was honorable, diligent, and trustworthy. (Tr. at 62.)

POLICIES

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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President 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. Ord. 10865, § 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the 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. (*Id.*)

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (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).) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, ¶ E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

The adjudicative guidelines at issue in this case are Guideline E, Personal Conduct, and Guideline J, Criminal Conduct. Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below. I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline E, Personal Conduct

The security concern under Guideline E, Personal Conduct, is that "[c]onduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information." (Directive, ¶ E2.A5.1.1.)

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Under ¶ E2.A5.1.2.2 of the Directive, "[t]he deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" may be disqualifying. Applicant's answers to Questions 35, 38, 39 and 26 on the Security Clearance Application were not accurate. The requested information concerned her financial history and police record, and was material and relevant to her security worthiness. The only issue is whether Applicant provided the inaccurate information inadvertently or deliberately, with an intent to mislead the government.

In response to Question 35, Applicant denied that she had any property repossessed within the preceding seven years. The available evidence was that she had continuing mechanical problems with the car that the seller could not or would not remedy, and she returned the car to them. Given that Applicant was not familiar with such transactions, it is understandable that she would not recognize that her voluntary return of the vehicle would be listed on a credit report as a repossession. I find Applicant did not intend to mislead the government by her response to Question 35.

Applicant's responses to Questions 38 and 39 concerning her delinquent debts are more problematic. In some ways her responses are inconsistent. On one hand she asserted she knew she had overdue debts in February 2002, but could not report them because she did not know the account numbers and other details. (Tr. at 22.) On the other hand, she claimed her husband paid the bills and she was not aware of delinquencies until after their separation in July 2002. (Tr. at 32.) Considering all the circumstances, I find that in February 2002 Applicant knew of several delinquent debts, including at the very least her credit card account that was placed for collection in 1998, and the debt remaining due on her car loan. Her explanation that she did not have the necessary information handy is not persuasive. Clearly she was able to take the time to obtain other required details for the application. The lack of some information may have been a motivation for her actions, but it does not excuse providing a false response. I find Applicant knowingly provided false answers to Questions 38 and 39 to conceal this derogatory information.

In response to Question 26, Applicant denied that she had been charged with a crime within the preceding seven years. The available evidence indicates the state filed four criminal charges for misdemeanor offenses. (Ex. 5.) Each criminal summons reflects it was not served because they were unable to locate Applicant. (*Id.*) Based upon the available evidence, I find Applicant did not knowingly provide a false response to this question.

Under ¶ E2.A5.1.2.1 of the Directive, "reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances" involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations may raise security concerns. Paragraph 1.e of the SOR alleges Applicant was charged with four counts of Misrepresentation to Obtain Employment Security Commission Benefits. The fact that charges were filed may be sufficient to raise a concern, but it is not compelling evidence that the underlying conduct occurred. The charges never went to trial so there was no judicial determination of responsibility. The fact that Applicant resolved the charges by making restitution does not establish that she was responsible for the

underlying misrepresentation. Applicant denies the allegation, and instead accuses her former husband. Considering all the circumstances, I am not persuaded that the charges in question constitute "reliable, unfavorable evidence" raising security concerns under this paragraph.

Under the Directive, ¶ E2.A5.1.3, an applicant may mitigate the security concerns arising from questionable personal conduct. Under ¶ E2.A5.1.3.1, it may be mitigating where "[t]he information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability." The debts Applicant did not report are substantiated by credit reports and her later admissions. Her record of financial difficulties is pertinent to a determination of her judgment and reliability. I find this mitigating factor does not apply.

The potentially mitigating condition in ¶ E2.A5.1.3.2 of the Directive arises where "the falsification was an isolated incident, was not recent, and the individual subsequently provided correct information voluntarily." Applicant's falsification of her security clearance application was an isolated incident. The Directive does not define the term "recent"; the recency of an incident is determined by considering all the circumstances, including the applicant's age, her pattern of behavior over a period of time, and the number of years since the last incident relative to the entire course of conduct. She completed the security clearance application in February 2002; she was then 25 years old, and had never executed such an application before. I find it was not recent. She provided correct information to the government since then. I conclude this potentially mitigating condition applies. I also considered carefully the other potentially mitigating conditions and conclude they do not apply.

Guideline J, Criminal Conduct

The security concern arising under Guideline J, Criminal Conduct, is that "[a] history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness." (Directive, ¶ E2.A10.1.1.)

Paragraph E2.A10.1.2.1 of the Directive provides that "allegations or admission of criminal conduct" may be disqualifying. Similarly, under ¶ E2.A10.1.2.2 of the Directive, it may be disqualifying where an applicant committed "a single serious crime or multiple lesser offenses." The SOR, ¶ 2.a, alleges Applicant violated the federal criminal code, 18 U.S.C. § 1001, by making false representations on her security clearance application. As discussed above, I find Applicant did not intentionally make false or misleading representations in response to Questions 26 and 35, but that her answers to Questions 38 and 39 were knowingly false. I find both these potentially disqualifying conditions raised in this case.

Under the Directive, the security concerns arising from a history of criminal conduct may be mitigated. As noted above, Applicant has the burden of showing that potentially mitigating conditions apply.

Under ¶ E2.A10.1.3.1 of the Directive, it may be mitigating when "the criminal behavior was not recent." Similarly, ¶ E2.A10.1.3.2 also provides that it may be mitigating where "the crime was an isolated incident. As discussed above, Applicant's execution of the security clearance application in February 2002 was an isolated incident and was not recent. These potentially mitigating conditions apply.

Paragraph E2.A10.1.3.4 of the Directive states it may be mitigating where "the factors leading to the violation are not likely to recur." Similarly, under ¶ E2.A10.1.3.6 of the Directive, it may be mitigating where "there is clear evidence of successful rehabilitation." Since the incidents in question, Applicant gained control of her finances and resolved her delinquent debts. She has established a solid record of excellent duty performance. I conclude these potentially mitigating condition are raised in this case.

The "Whole Person" Concept

I carefully considered all the facts and circumstances, including the potentially disqualifying and mitigating conditions, in light of the "whole person" concept. A misrepresentation on a security clearance application raises serious concerns, both because the government relies on these matters to decide whom to entrust with sensitive or classified material, and because such conduct calls into question an individual's trustworthiness. (Directive, ¶ E2.2.1.1.) In this case, it was an isolated incident occurring several years ago, when Applicant was only 25 years old and facing difficult financial circumstances. (Directive, ¶ E2.2.1.2; ¶ E2.2.1.3; ¶ E2.2.1.4.) Since then, she has resolved her personal and financial problems, established a solid record of excellent job performance, and demonstrated her dependability and trustworthiness. (Directive, ¶ E2.2.1.6.) At this point, the incident provides no potential for pressure, coercion, exploitation, or duress. (Directive, ¶ E2.2.1.8.) I find Applicant has matured greatly over these years, and that there is little likelihood of a recurrence of such problems. (Directive, ¶ E2.2.1.9.) I conclude Applicant has mitigated the security concerns arising from her history of personal and criminal conduct.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline E: 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

Paragraph 2, Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

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

Michael J. Breslin

Administrative Judge