

DATE: December 29, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-16795

DECISION OF ADMINISTRATIVE JUDGE

MARK W. HARVEY

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Fifty-one-year-old Applicant had eleven alleged delinquent debts listed on her statement of reasons (SOR). One debt was not substantiated. The ten remaining delinquent SOR debts totaled \$13,936. The SOR debts became delinquent between 1999 and 2006. She did not attempt to pay, settle, or pay any of her them. She falsely answered two questions on her Security Clearance Application concerning delinquent debts because she was embarrassed about her financial circumstances. She has not mitigated concerns about financial considerations and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On May 19, 2005, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86).⁽¹⁾ On August 31, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.⁽²⁾ The SOR alleges security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an answer, notarized on September 17, 2006, Applicant responded to the SOR allegations, and elected to have her case decided at a hearing.⁽³⁾ On October 31, 2006, the case was assigned to me. The hearing was held on November 27, 2006. DOHA received the hearing record (R.) on December 12, 2006, and I received it on December 13, 2006.

FINDINGS OF FACT

As to the factual allegations under Guidelines F and E, Applicant admitted that she was responsible for the eleven debts

listed on the SOR, and that she falsified Questions 38 and 39 of her SF 86.⁽⁴⁾ Her admissions are incorporated herein as findings of fact, except I have determined that she is responsible for ten of the eleven SOR debts. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 51-years-old (R. 5). For the last eighteen months, she has been employed by a United States government contractor as lead custodian.⁽⁵⁾ She needs a clearance so she can enter and clean restricted areas (R. 56). From 1996 to 2001, she drove a cab. From 2001 to 2004, she cleaned houses. From 2004 to 2005, she held three different jobs, but worked primarily in staffing services. There was no evidence presented concerning her job performance.

Immediately prior to starting her job with a government contractor, she was unemployed for three months (R. 19). She has no prior military service.⁽⁶⁾ She has a high school diploma (R. 5). She was married on March 19, 2005.⁽⁷⁾ She was previously married from 1985 until February 2005. Her four children were born in 1971, 1973, 1977 and 1981.⁽⁸⁾ Her children are grown and are not living at home (R. 42).

SOR Paragraph	SOR Amount	Account Type and Date Charged Off or Placed for Collection
¶ 1.a	\$1,124	Credit card debt-Dec. 1999 (R. 26)
¶ 1.b	\$819	Credit account debt-Sep. 2000 (R. 28)
¶ 1.c	\$113	Telephone services debt-Oct. 2000 (R. 29-30)
¶ 1.d	\$9,294	Credit card debt-Jan. 2001 (R. 30-31; 46-47)
¶ 1.e	\$797	Cell phone debt-Aug. 2001 (R. 31-32)
¶ 1.f	\$80	Gymnasium debt-Sep. 2002 (R. 32-33)
¶ 1.g	\$5,674	Credit card debt-Dec. 2002 (debt not substantiated) (R. 33-34, 47-50, 52; Exhibit 4, at 2)
¶ 1.h	\$427	Credit card debt-Aug. 2004 (R. 34)
¶ 1.i	\$311	Medical debt-Apr. 2005 (R. 34-36)
¶ 1.j	\$716	Medical debt-Apr. 2005 (R. 36-37)
¶ 1.k	\$255	Telephone services debt-Jan. 2006 (R. 37-38)

Applicant told an investigator in 2006 that she had no knowledge of the debt in SOR ¶ 1.g, and reiterated her lack of knowledge of the origin of this debt at her hearing (R. 33-34, 47-50, 52; Exhibit 4, at 2). This debt is not established by substantial evidence. As to the remaining ten SOR debts, she has not made any payments, and has not attempted to work out a payment plan or a settlement (R. 26-50). She had two consultations with a credit counselor in early 2006 (R. 38). However, she does not yet have a budget, and does not want to arrange settlements with her creditors (R. 43). She would like to start making payments to some of her creditors on the SOR in the future (R. 42-43).

Applicant provided a personal financial statement (PFS), dated March 15, 2006, to a security investigator.⁽⁹⁾ Her PFS indicates her gross salary was \$1,440 per month, her net salary was \$1,180 per month, and her expenses totaled \$1,450 per month. She listed monthly household expenses as follows: rent (\$500), groceries (\$300), clothing (\$0), utilities (\$245), car expenses (\$206), and miscellaneous (\$200). She listed two debts: a car loan with a monthly payment of \$348; and a personal loan with a monthly payment of \$250. Her total monthly debt payment was \$598. The PFS lists the following assets: savings of \$390; a car with a value of \$4,000; and miscellaneous with a value of \$2,000. After deducting all expenses and her debt payments, she had a negative cash flow of \$868 per month. Her husband's income is not included in her PFS, and he makes \$9,000 per year. Her husband's income is greater now than it has been in previous years (R. 50). She does not provide financial support to her children, except she provides some money to her son, who is incarcerated (R. 43).

At her hearing, Applicant was optimistic about her financial future. Recently, she made some financial progress as demonstrated by her saving enough money to pay cash for a computer (R. 45). She was also able to pay off her car loan (R. 45). She recently started making payments on her delinquent student loan and on a delinquent telephone bill, which are both non-SOR debts (R. 55). At her hearing she emphasized her good intentions (R. 21-22). She promised that she would obtain more financial counseling and take care of her most recent debts (R. 20).

Question 38 of Applicant's security clearance application asks, "[i]n the last 7 years, have you been over 180 days delinquent on any debt(s)?" and Question 39, asks "[a]re you currently over 90 days delinquent on any debt(s)?" When she completed her security clearance application on May 19, 2005, she answered, "No" to both questions because she was ashamed and embarrassed and did not want to disclose her delinquent debts (R. 44).

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider Enclosure 2 of the Directive, which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These adjudicative guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process provision in Section E2.2, Enclosure 2, of the Directive. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1: (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.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests 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 avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by "substantial evidence."⁽¹⁰⁾ The government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, "The 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 [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." The burden of disproving a mitigating condition never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁽¹¹⁾

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship 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. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or

safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The scope of an administrative judge's decision is limited. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance 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." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Guideline F (Financial Considerations)

The government has met its initial burden under Guideline F. Applicant's initial failure to pay her debts is of concern, especially in light of her desire to have access to the nation's secrets. Under Guideline F (Financial Considerations), "[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 Financial Considerations Disqualifying Conditions (FC DC) could raise a security concern and may be disqualifying in this case. FC DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. FC DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's actions in initially failing to satisfy her outstanding financial obligations give rise to FC DC 1 and 3. Applicant admitted she was responsible for ten of the eleven debts listed in the SOR. She recognized that she made poor decisions, and her debts became delinquent because she spent too much money, and had too little income. The government produced substantial evidence of these two disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the government. ⁽¹²⁾

A security concern based on financial problems can be mitigated by substantial evidence under FC MCs 1 or 2 that "the behavior was not recent" or "it was an isolated incident." Directive ¶¶ E2.A6.1.3.1 and E2.A6.1.3.2. The Directive does not define "recent," and there is no "bright-line" definition of what constitutes "recent" conduct. Based on my evaluation of the record evidence as a whole, ⁽¹³⁾ I conclude FC MCs 1 and 2 do not apply because Applicant had multiple (ten) delinquent SOR debts at the time of her hearing, and her ten delinquent SOR debts are not in the process of being resolved.

Applicant disclosed some information to support consideration of FC MC 3, "the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)." Directive ¶ E2.A6.1.3.3. She indicated she was unemployed for three months in early 2005, and has been underemployed periodically over the last decade. However, her financial difficulties remain largely unexplained. Although unemployment or underemployment may have caused her financial problems, she has not provided enough information about changes in her financial situation, with linkage to the generation of her delinquent debts to warrant full application of FC MC 3.

FC MCs 4 and 6 can mitigate a security concern arising from financial problems when, "the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control," or "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Directive ¶¶ E2.A6.1.3.4 and E2.A6.1.3.6.

Based on the sincerity of her testimony, and some indicia of improved financial self-discipline, I have some confidence that she is on the right track towards correction of her financial problems. She receives partial credit under FC MC 4 because there is sufficient evidence that she has will begin or has begun to receive financial counseling, and there are some indications that the problem is being resolved or is under control. ⁽¹⁴⁾

FC MC 6 does not apply because there is insufficient information to establish that Applicant showed good faith in the resolution of her debts. The Appeal Board has defined the concept of good faith, as requiring "a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004). Applicant has not provided any information about how she paid, or attempted to resolve her ten delinquent SOR debts.

Personal Conduct

Under Guideline E, "conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that [applicant] may not properly safeguard classified information." Directive ¶ E2.A5.1.1.

Three personal conduct disqualifying conditions (PC DC) could potentially raise a security concern and may be disqualifying in this case. PC DC 2 applies where there has been "deliberate omission, concealment, or falsification of relevant and material 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." Directive ¶ E2.A5.1.2.2. A security concern may result under PC DC 3 when an applicant deliberately provides "false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination." Directive ¶ E2.A5.1.2.3. PC DC 5 applies when an applicant has "a pattern of dishonesty or rule violations." Directive ¶ E2.A5.1.2.5.

For PC DCs 2 and 3, Applicant deliberately gave a false answer to Questions 38 and 39 of her 2005 SF 86, in an attempt to conceal her financial problems. The evidence of record establishes SOR ¶¶ 2.a and 2.b by substantial evidence because she admitted preparing her security questionnaire, she understood the questions, and she deliberately provided answers that omitted important information. The omitted information would have provided the government with material derogatory information. PC DC 5 does not apply to SOR ¶¶ 2.a and 2.b because the falsification occurred on the same 2005 SF 86.

A security concern based on Guideline E may be mitigated by substantial evidence of personal conduct mitigating conditions (PC MC). Under PC MC 1, security concerns may be mitigated when the derogatory "information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability." Directive ¶ E2.A5.1.3.1. The allegations in SOR ¶¶ 2.a and 2.b are established by substantial evidence, and constitute deliberate falsifications. As such SOR ¶¶ 2.a and 2.b are relevant to making a security determination about her judgment, trustworthiness, and reliability.

PC MC 2 applies when the "falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily." Directive ¶ E2.A5.1.3.2. PC MC 3 applies when the "individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts." Directive ¶ E2.A5.1.3.3. Applicant has partially established PC Cs 2 and 3 because only one false SF 86 was submitted to the government on May 19, 2005, approximately 18 months ago. Additionally, she made a belated, good-faith effort to correct the record when she admitted the falsification in 2006 in her response to the SOR and at her hearing (albeit after being confronted with the facts). ⁽¹⁵⁾ Although her eventual admission that the clearance entries were false was not "prompt," she deserves some credit under the "whole person" concept for providing accurate information in 2006. *See* ISCR Case No. 04-07360 at 2, 3 (App. Bd. Sep. 26, 2006) (indicating when a mitigating condition cannot be fully applied, "some credit" is still available under that same mitigating condition).

PC MC 4 applies when "[o]mission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided."

Directive ¶ E2.A5.1.3.4. There is no evidence that anyone gave Applicant improper or inadequate advice or suggested that she omit information from her SF 86. Security concerns can be mitigated under PC MC 5 when an applicant "has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress." Directive ¶ E2.A5.1.3.5. Under PC MC 5, Applicant receives some credit for eventually disclosing her financial problems. Any steps made toward rehabilitation are insufficient in magnitude and too recent to support full application of PC MC 5.

"Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative guidelines related to the whole person concept under Directive provision E2.2.1. As noted above, Applicant's failure to make progress resolving ten SOR debts is a serious, ongoing, long-term problem and is sufficiently serious to be a security concern. Moreover, her false statement on her 2005 SF 86 is an even greater security concern because it is an indication she may not safeguard classified information. E2.2.1.1. Her actions were knowledgeable and voluntary. E2.2.1.2 and E2.2.1.5. Her debts are currently unpaid, and the falsification occurred relatively recently. E2.2.1.3. She is 51 years old, sufficiently mature to be fully responsible for her conduct. E2.2.1.4. The motivation for the falsification was to conceal information about her financial problems, and her failure to pay her debts was caused by low income as well as her lack of financial self-discipline (an inability to delay or deny personal financial gratification). E2.2.1.7. A person "who is financially overextended is at risk of having to engage in illegal acts to generate funds" and as such there is the potential for pressure and exploitation. E2.A6.1.1 and E2.2.1.7. The likelihood of recurrence cannot yet be determined because insufficient evidence was presented about improvement in her financial situation, and corroborating evidence of change is sparse. E2.2.1.6 and E2.2.1.9. The absence of evidence of any prior security violation, her forthright and candid statement at her hearing, her evident sincerity about making financial progress, and her remorse about her falsification all weigh in her favor. However, there is a paucity of supporting evidence establishing her rehabilitation. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude she has not mitigated the security concerns pertaining to financial considerations and personal conduct.

The evidence leaves me with grave questions and doubts as to Applicant's security eligibility and suitability. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"⁽¹⁶⁾ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive. Applicant has failed to mitigate or overcome the government's case. For the reasons stated, I conclude she is not eligible for access to classified information.

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: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Paragraph 2., Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Mark W. Harvey

Administrative Judge

1. Exhibit 1, Electronic Standard Form (SF) 86, Security Clearance Application is dated May 19, 2005, on the first and last pages. Applicant's signature appears on the last page. There is an allegation of falsification of this SF 86 in SOR ¶¶ 2.a and 2.b.
2. Exhibit 6 (Statement of Reasons (SOR), dated August 31, 2006). Exhibit 6 is the source for the remainder of this paragraph.
3. Exhibit 7 (Applicant's response to SOR was notarized on September 17, 2006).
4. *Id.*
5. Exhibit 1, *supra* note 1, at 2-3 is the source for this sentence and the next three sentences, concerning her employment, except as otherwise indicated.
6. Exhibit 1, *supra* note 1, question 11, at 6.
7. *Id.*, question 8, at 4 is the source for this sentence and the next sentence.
8. *Id.*, question 9, at 5-6.
9. Her personal financial statement was part of a summary of her interview, which was not signed (Exhibit 4). Applicant did not object to my consideration of Exhibit 4, and I admitted it into evidence (R. 51-53). This summary is the source for the information in this paragraph, unless otherwise indicated.
10. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).
11. "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether

Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

12. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

13. *See* ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

14. *See* ISCR 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FCMC 6 for debts being resolved through garnishment).

15. In ISCR Case No. 04-08934 at 2 (App. Bd. Aug. 17, 2006) the Board stated that an applicant's statements about his or her intent and state of mind when the SF 86 was executed were relevant but not binding information. Moreover, an applicant's statements are considered in light of the record evidence of a whole. *Id.* "The security concerns raised by an applicant's falsification are not necessarily overcome by applicant's subsequent disclosures to the government. *See* ISCR Case No. 01-19513 at 5 (App. Bd. Jan. 22, 2004)." *Id.*

16. *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).