



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-01427
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco J. Mendez, Jr., Esquire, Department Counsel
For Applicant: *Pro Se*

February 21, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government's security concerns under Guideline F, Financial Considerations, Guideline E, Personal Conduct, and Guideline B, Foreign Influence. Applicant's eligibility for a security clearance is denied.

On August 2, 2007, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, E, and B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant partially answered the SOR in an undated response and subsequently provided a complete answer on October 10, 2007. She elected to have her case decided on the written record. Department Counsel submitted the government's file of

relevant material (FORM) on November 30, 2007. The FORM was mailed to Applicant on December 4, 2007, and it was received on December 6, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM. On December 11, 2007, Department Counsel submitted a supplemental file of relevant material. Applicant was afforded another opportunity to file objections and submit material. Applicant did not object to the supplemental material and did not provide any additional information. The case was assigned to me on January 31, 2008.

Findings of Fact

Applicant admitted all of the allegations in the SOR and they are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is a 27-year-old contracts administrator who has worked for a federal contractor since August 2006. She is a college graduate. She is married, but going through a divorce.

Applicant signed her security clearance application (SCA) on September 12, 2006. She listed she had approximately \$10,000 in credit card debts over 180 days delinquent. She provided the following statement: "I was out of work and didn't pay credit card bills, working with debt consolidation to pay off creditors."¹ Applicant does not list any periods of unemployment on her SCA.²

In response to interrogatories dated April 23, 2007, Applicant responded she was verifying all of the allegations in subparagraph 1, except the debts for her student loans that were deferred. She also stated "I was considering contacting a consumer credit counseling service, but have not done so to date."³

The SOR alleges 22 delinquent debts. Applicant admits in her answer dated October 10, 2007, she owes the debts alleged under subparagraphs ¶¶ 1.a, 1.b, 1.f, 1.j, 1.m, 1.p, and 1.v, totaling \$27,986. She denies the remaining debts totaling \$16,883. She also has \$55,000 student loan debt that is deferred. In her answer regarding ¶ 1.a, she stated she was "working to pay this account," ¶1.b, she was "trying to work out a payment plan with this creditor," ¶¶1.f and 1.j she was "trying to work out a payment plan," ¶1.m "I have been unable to locate this creditor," ¶1.p "I am trying to get an address to mail payments to for (sic) this account," and ¶1.v "I currently have a payment agreement."

¹ Security Clearance Application provided with Supplemental Material.

² *Id.*

³ Item 10.

Applicant provided a document dated April 19, 2007, which indicates she paid the debt in ¶1.f; this debt had been delinquent since 2002.⁴ Applicant addressed some of her debts as follows: She provided an unsigned payment plan from the creditor in ¶1.v.⁵ She provided a letter from a collection agency in ¶1. q, indicating it was no longer the owner of the debt and provided Applicant with the name and phone number of the collection agency now holding the debt.⁶ She provided a letter from the creditor in ¶1.d (who is the same creditor in ¶¶1.g and 1.h, both debts are judgments) indicating they disagreed with her interpretation of federal law and they have alerted the credit reporting agencies that she disputes the account.⁷ She provided a letter from the creditor listed in ¶1.p stating that she only provided a partial account number so they could not locate her account. They also explained to her information she needed to provide and the place to send the information to verify the account.⁸ A similar letter was provided from the creditor in ¶1.c stating she had provided incomplete account information and provided her with contact information for assistance.⁹ No information was provided by Applicant regarding what actions she has taken subsequent to the above mentioned correspondence or regarding all of her other delinquent debts. Applicant also stated, "I am currently working on verifying which debts listed on my credit report belong to me as I am a victim of identity theft."¹⁰ She did not provide any corroborating information about this assertion, such as a police report, a dispute with the credit bureaus, or a request to monitor her credit reports.

Applicant failed to disclose on her SCA her marital status. She admitted she falsified the information about her marital status.¹¹ The explanation for why she did not list her marriage on her SCA was: "I am not aware of much of the information requested and thought it easier to explain as the form did not leave room for missing information."¹² The question of ones marital status is uncomplicated. Ample room is available on the SCA under the "Additional Information" block to provide explanations. That block was empty. Based on the information provided, I find she intentionally falsified her SCA.

⁴ Item 5 at 6.

⁵ Item 5 at 7-8.

⁶ Item 5 at 9.

⁷ Item 5 at 10.

⁸ Item 5 at 11.

⁹ Item 5 at 12.

¹⁰ Item 5.

¹¹ Item 5.

¹² Item 8.

Applicant's husband is a citizen and resident of Guyana. It is alleged he works for the government of Guyana. Applicant stated: "I don't know if he still lives there. He is no longer employed by the Guyanese government."¹³ Applicant failed to divulge her husband's citizenship. No information was provided as to what job her husband held in the Guyanan government, what contacts he maintains, or where he is currently employed. On her SCA, she indicated that she took many short trips to Guyana from June 2000 to June 2004. She did not directly answer allegation ¶3.c which alleged she traveled to Guyana in June 2000 for her marriage, once between 2000 and 2004, and once in 2005.¹⁴ I find Applicant's failures to divulge the above information were deliberate and intentional.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

¹³ Item 5.

¹⁴ Item 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 and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations: 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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

I have considered all of the disqualifying conditions under AG ¶ 19 for financial considerations that could raise a security concern and have especially considered AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and (c) (“a history of not meeting financial obligations”). Applicant has a history of delinquent debts extending from 2000 to present. She admitted she owes many of the delinquent debts. Most of them remain unpaid and she provided minimal information regarding any substantive actions she has taken to pay or resolve the debts. I find both AG ¶ 19 (a) and (c) apply.

AG ¶ 20 provides conditions that could mitigate financial considerations security concerns. I have considered all the mitigating conditions and especially considered (a) (“the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment”), (b) (“the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances”), (c) (“the person has received or is receiving counseling for the problem and/or there are clear

indications that the problem is being resolved or is under control”), (d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”), and (e) (“the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue”).

Applicant owes thousands of dollars to numerous creditors and failed to provide evidence that she is addressing all of her debts. No information was provided to show the delinquencies were beyond her control. No information was provided to show she actually followed through with credit or financial counseling. It appears she paid one debt, but has not initiated a good faith effort to pay her other debts or resolve their delinquent status. Applicant made one statement that she was the victim of identity theft, but failed to provide information as to which debts she believed were not hers. She admitted to over \$22,000 in delinquent debt that was not part of an alleged theft. I find none of the mitigating conditions apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

I have considered all of the personal conduct disqualifying under AG ¶ 16 and especially considered (a) (“deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities”). Applicant intentionally and deliberately falsified information on her SCA by not listing her correct marital status and failing to divulge that her husband was a citizen and resident of Guyana.

Applicant is a college graduate working as a contracts administrator. Her explanation as to why she failed to list her marital was that she was “not aware of much of the information requested and thought it easier to explain as the form did not leave room for missing information.” There is a specific block on the form that allows for providing additional information. Applicant chose not to use that block to provide the requested information. Minimally she could have divulged she was married, but she did not. She also chose not to divulge that her husband is a citizen and resident of Guyana. Her explanations are disingenuous and I find her omissions were intentional and deliberate.

I have considered all of the personal conduct mitigating conditions under AG ¶ 16. Applicant knew she was married and knew her husband's citizen status, but failed to

provide this important required and requested information. She has not provided any mitigating evidence. Therefore, I find none of the mitigating conditions apply.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence: Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of the disqualifying conditions under AG ¶ 7. I have especially considered AG ¶ 7 (a) (“contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion”). I have considered all the information provided and conclude that Applicant is married to a citizen of Guyana. She deliberately falsified her marital status and her husband’s foreign status. She failed to provide a reasonable explanation for lying on her SCA about this information. Her concealment of this information, by itself, creates a heightened risk. I have no information about her contact with her husband, whether they live together, whether he provides financial support to her or visa versa. It is alleged that he works for the Guyanan government. She stated he no longer work there, but failed to provide any other information. The lack of information regarding either his former role in the government or present role creates a heightened risk. With additional information that risk might be mitigated, but based on the lack of information provided, Appellant has failed to meet her burden of mitigation. I conclude no mitigating conditions apply.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): “(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.” Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security

clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has a long history of financial delinquencies. She has failed to address how she is resolving the debts and almost all of them remain unpaid. Her answers are inconsistent as to what actions she was taking to resolve the debts. She claimed she was a victim of identity theft, but offered no evidence to show her actions to resolve that issue. She admitted she lied on her SCA about her marital status. She failed to list her husband is a foreign national and any specifics about his employment or activities. Applicant deliberately and intentionally falsified her SCA. Overall the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from Guidelines F, E, and B.

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-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.c-1.v:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline B:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

CAROL G. RICCIARDELLO
Administrative Judge