



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



In the matter of:)	
)	
)	
SSN:)	ISCR Case No. 07-03933
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

February 15, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant had six past-due accounts totaling \$43,000. When completing a security clearance application, she forgot to list a public intoxication charge, which had occurred 12 years earlier. Applicant has established a repayment plan with each of her creditors. She has successfully mitigated the financial considerations and personal conduct concerns. Clearance is granted.

History of the Case

Applicant contests the Defense Department's intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive, ¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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.

Statement of Reasons (SOR) on September 20, 2007, detailing the security concerns Guideline F for financial considerations based on a history of financial problems as evidenced by delinquent debts and Guideline E for personal conduct for falsified material on a Questionnaire for National Security Positions.

On October 17, 2007, Applicant answered the SOR, and requested a hearing before an administrative judge. On November 8, 2007, I was assigned the case. On November 13, 2007, DOHA issued a notice of hearing for a hearing held on November 28, 2007. The government offered Exhibits (Ex.) 1 through 5, which were admitted into evidence. Applicant testified on her own behalf and submitted documents admitted into evidence as Exhibit A. The record was kept open to allow Applicant to submit additional matters, and they were received on December 8, 2007. Department Counsel did not object to the material and it was admitted into evidence as Ex. B. On December 6, 2007, DOHA received the transcript (Tr.) of the hearing.

Findings of Fact

In her Answer to the SOR, dated June 25, 2007, Applicant admitted the factual allegations in ¶¶ 1.b through 1.f. with explanation. She denied the factual allegations in ¶¶ 1.a and 2.a of the SOR. The admissions are incorporated herein as findings of fact. After a thorough review of the record, I make the following findings of fact.

Applicant is a 49-year-old proposal coordinator who has worked for a defense contractor since February 2006, and is seeking to maintain a security clearance. Supervisor, coworkers, and friends state Applicant is a loyal, trusted employee, dependable, dedicated, conscientious, intelligent, highly capable, organized, diligent, thorough, competent, punctual, highly efficient, hard working, has outstanding integrity, honesty, loyalty, an innovative self-starter who rarely needs supervision, who continually exceeds expectations and cares deeply about her job and doing the best she can. (Ex. A) She sets an extraordinary example for others in the office and has expanded her duties and responsibilities. One coworker stated she was better for having known and worked with Applicant. (Ex. A)

In 2005, Applicant was in the process of divorcing her husband when he was involved in a motorcycle accident while driving drunk. (Tr. 31) He suffered brain trauma affecting the cognitive portion of his brain. He had the cognitive thinking of a 17-year-old. (Tr. 33) He used Applicant's social security number to open credit and charge items. When she discovered the debts, she closed all credit cards and assumed responsibility for a \$23,000 credit card debt (SOR ¶ 1.d.) She knew her husband could not pay the debt because his only income was his disability income. Since July 2005, Applicant has been paying \$200 for this debt on the 26th of each month by direct draft from her checking account. (Ex. B, Ex. 2, Tr. 33, 44)

The \$171 debt in SOR ¶ 1.a was Applicant's ex-husband's magazine debt, which Applicant does not intend to pay. (Tr. 40) Applicant has made an offer of \$570 on the \$1,175 debt in SOR ¶ 1.b. Applicant has established a repayment agreement on this

debt. (Ex. B) She arranged for \$200 to be paid in December 2007, \$100 in January 2008, and the balance to be paid from her income tax refund. (Ex. B, Tr. 34)

The credit collection agency has offered to settle the \$11,163 joint credit card debt listed in SOR ¶ 1.c for \$5,581. (Ex. 2, Tr. 43) Applicant has arranged to pay \$100 monthly on this debt. The creditor has offered to settle the \$899 debt listed in SOR ¶ 1.e for \$494. (Ex. 2) Applicant has arranged to make \$25 monthly payments on the 11th of each month by bank draft this debt. (Ex B, Tr. 34) Applicant provided documents showing payments were made in November 2006, December 2006, February 2007, May 2007, and June 2007. (Ex. B)

Applicant has a joint debt with her ex-husband of \$6,614 (SOR ¶ 1.f). Applicant has an automatic \$125 monthly deduction on the 11th of each month paying this debt. (Ex. B, Tr. 34) The repayment agreement started on September 12, 2007. (Tr. 47, 50) Applicant provided documents showing payments were made in November 2006, December 2006, January 2007, February 2007, March 2007, May 2007, and June 2007. (Ex. B)

Applicant had sought financial counseling from Consumer Credit Counseling Service (CCCS). (Tr. 56) Due to her low income, CCCS did not see how she could make a monthly payment on her debts. Applicant now maintains a budget. (Tr. 57) She has made a number of moves during the past few years that added to her financial burden. (Tr. 68)

In 1994, Applicant was charged with public intoxication. Applicant and her husband were at a bar. Following an argument with her husband, she left the bar and went to a convenience store to call a friend to pick her up. (Tr. 35) When she left the store, her friend and the police were there. The judge dropped the charge because she had called someone to pick her up and was not causing problems when arrested. (Ex. 2) She forgot about the charge when she asked a question on her Questionnaire for National Security Positions about alcohol related arrests. The charge had occurred 12 years earlier.

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.

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

Under Guideline F (financial considerations) a security concern typically exists due to significant unpaid debts. 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.²

An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Additionally, an

² Revised adjudicative guidelines (AG) ¶ 18.

individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant owed approximately \$43,000 on six past-due obligations. Disqualifying Conditions (DC) ¶ 19(a), "inability or unwillingness to satisfy debts" and 19(c), "a history of not meeting financial obligations," apply.

Prior to Applicant's divorce, her husband was involved in a motorcycle accident that affected his cognitive thinking. He ran up some large debts on credit cards he had opened. When Applicant discovered the debts she cancelled the cards and arranged repayment on the largest of the debts. Since July 2005, she has been paying \$200 a month on debt in SOR ¶ 1.d. She has also been making monthly payments in on the debts listed in SOR ¶¶ 1.e and 1.f. She has arranged a repayment plan on the debts listed in SOR ¶¶ 1.b and 1.c. Repayment plans without a history of payments is often of little value. However, having complied with the provisions of the repayment plan on the other three debts, it is likely she will do so on the two plans she has recently established.

Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." When Applicant discovered her husband was running up their debts she acted reasonably in cancelling the credit cards, assuming the debt, and starting a repayment plan. AG ¶ 20(a) applies.

AG ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances," has some applicability. She was divorced and her husband's actions were beyond her control.

Evidence that "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" under AG ¶ 20(c), applies. She received counseling from CCCS and her obligations are under control.

AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has established repayment plans on five of the six debts. Applicant’s conduct does not raise concerns about her current reliability, trustworthiness, or good judgment.

The remaining \$171 debt is her husband’s debt and not her responsibility.

Guideline E, Personal Conduct

The allegations under Guideline E, (Personal Conduct) are refuted. The Government has shown Applicant’s answer to question 23 was incorrect, but this does not prove the Applicant deliberately failed to disclose information about her 1994 arrest. She was arrested for public intoxication, but the charge was dropped. The event had occurred 12 years before she completed her questionnaire. She forgot about the arrest when she completed the questionnaire. The Applicant has denied intentional falsification.

Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. An omission concerning a 12 year old arrest is not deliberate if the person had forgotten about it when completing her form. Her actions were not a deliberate omission, concealment, or falsification.

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. After hearing her testimony, observing her demeanor, and evaluating all the evidence of record, I found her testimony credible that she will honor the two repayment plans recently established. The debts incurred were not the type that indicates poor self-control, lack of judgment, or

unwillingness to abide by rules and regulations. Money was not spent frivolously by Applicant.

Applicant has established repayment plans on her five debts. Of course, the issue is not simply whether all his debts are being paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. When she completed her security questionnaire she simply forgot about her arrest 12 years earlier. Her action did not show questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial considerations and personal conduct.

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: FOR APPLICANT

 Subparagraph 1.a – 1.f: For Applicant

Paragraph 1, Guideline E: FOR APPLICANT

 Subparagraph 2.a: For Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge