



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



In the matter of:)
)
) ISCR Case No. 08-09575
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

March 11, 2010

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I granted Applicant's eligibility for access to classified information.

Applicant executed and signed her Security Clearance Application (SF 86) on June 2, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E and F on May 26, 2009. 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 answered the SOR in writing on June 20, 2009 and requested an administrative determination. After receiving the file of relevant materials, she submitted

a request for a hearing before an administrative judge on September 6, 2009. DOHA received the request shortly thereafter. Department Counsel was prepared to proceed on October 23, 2009, and I received the case assignment on November 2, 2009. DOHA issued a notice of hearing on November 17, 2009, and I convened the hearing as scheduled on December 8, 2009. The government offered four exhibits (GE) 1 through 4, which were received and admitted into evidence without objection. Applicant testified on her own behalf. She submitted fourteen exhibits (AE) A through N, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on December 22, 2009. I held the record open for Applicant to submit additional documentation. She timely submitted four exhibits, AE O through AE R, without objection. The record closed on January 8, 2009.

Procedural and Evidentiary Rulings

Notice

Applicant received the hearing notice on November 24, 2009. (Tr. 9.) I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to 15 days notice. (*Id.*)

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a through 1.f of the SOR, with explanations. She admitted the factual allegations in ¶¶ 2.a of the SOR, but denied she intentionally falsified her answer.¹ She also provided additional information to support her request for eligibility for a security clearance.

Applicant, who is 37 years old, works as a photo editor for a Department of Defense contractor. Applicant began her journalism career in 1990 as a newspaper receptionist. She developed her work skills, which resulted in new positions as an editorial clerk, online producer, and her present position beginning in May 2008.²

Applicant married in 1999 and divorced in 2004. She has no children. She has attended college, but does not have a degree. She plans to continue her education with a bachelor's degree as her goal.³

¹When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted).

²GE 1; Tr. 25.

³GE 1; AE A; Tr. 25-26.

After her divorce, Applicant's household income decreased from \$80,000 (joint income) to \$25,000 (her income only). She and her former husband agreed that he would assume responsibility for their house and she would keep her car. She moved into an apartment with a roommate and shared living expenses. She managed her finances.⁴

Within a few months of her divorce, Applicant learned that her mother was seriously ill and needed her assistance. In December 2004, Applicant took a leave of absence from her job to care for her mother, who lived many miles from her. Before she left, Applicant paid her share of her rent and utilities. She did not have a car payment. Her plane ticket home was expensive.⁵

She assumed that her grandmother could assist her with the care of her mother. When she arrived at her mother's home, she realized that her grandmother was in ill health and not able to help with her mother's care. Rather, Applicant began caring for her grandmother and mother. Her grandmother died six months later.⁶

Applicant's mother's only source of income is Social Security payments. Medicare paid for a significant portion of her mother's medical expenses, but did not pay for all her mother's medical expenses. Applicant used her credit card to pay these expenses, particularly medicines.⁷

A few months after her return from caring for her mother, Applicant received a job offer with a promotion, which she accepted. Her new job required her to move to another city about 100 miles away. Applicant rented an apartment in her new location. She paid \$1,150 a month in rent, plus utilities. Because of the rent costs, Applicant terminated this lease prior to its end date. Applicant signed a notice to vacate agreement on September 22, 2007, which gave management the right to inspect her unit for damage prior to her moving. She did not receive notice of any damage. The agreement showed that she owed \$2,338 for terminating the lease. She understood the termination costs were two months' rent (\$2,300) and her \$500 security deposit. She paid this money and lost her security deposit. After giving notice of her early termination, the apartment complex assessed additional charges for unknown costs.⁸

With her new job, Applicant thought her life was good. She then realized, however, that her finances were out-of-control. Applicant contacted a credit resolution company and her creditors to develop a plan for her debt payment. She worked out

⁴Tr. 28-29.

⁵*Id.* 26, 30.

⁶AE C; Tr. 26-27.

⁷Tr. 30.

⁸GE 1; AE M; Tr. 27, 31-33.

payment plans with several creditors on her own. The credit resolution company agreed to manage three debts for her (allegations 1.b, 1.c, and 1.d). She started payments of \$53 a month to this company in April 2007. A portion of this money pays a fee to the credit resolution company. The remainder of the money is placed in a savings account until the company has sufficient money to negotiate a settlement of one of the debts. She now pays this company \$58 a month. Applicant described her debt repayment plan as a 10-year plan, and this is true for her credit resolution plan.⁹

The SOR lists six debts. The debt in allegation 1.a concerns the apartment lease Applicant terminated in September 2007. In her response to interrogatories, Applicant provided a check that showed she paid \$300 to this creditor in July 2008. Because she paid the creditor \$2,300 in 2007, she disputes this debt and does not believe she still owes this creditor \$3,600. She attempted to negotiate this debt with the creditor without success. Applicant has not provided copies of her 2007 payments.¹⁰

The three credit card debts listed in allegations 1.b, 1.c, and 1.d are included in her payment plan with the credit resolution company. Since April 2007, Applicant has paid this company nearly \$1,900, but it has not paid a debt for her. Applicant negotiated a settlement and separate payment plan with the creditor in allegation 1.d. The creditor agreed to settle the debt for \$2,970 and accepted a monthly payment of \$117 beginning December 31, 2008. Applicant has complied with the terms of this payment plan.¹¹

SOR allegation 1.e concerns a credit card debt for \$6,500. The owner of the debt has changed several times. Applicant negotiated a repayment plan with the current owner of this debt in the summer of 2008. She made an initial payment of \$200 in September 2008, and has paid \$150 a month on this debt since her first payment. Her monthly payment is automatically deducted from her checking account. This creditor agreed not to charge her additional interest or late fees, which enables her to eventually pay this debt. Based on her payments provided, Applicant has reduced this debt by at least \$2,600 as of January 2010. She did not provide proof of her \$150 payment in January 2009, but given her payment record, I infer this payment has been made.¹²

SOR allegation 1.f concerns another credit card debt in the amount of \$9,000. Applicant negotiated a payment plan with this creditor in the early summer of 2008. She made an initial payment of \$200 in July 2008, and paid an additional \$1,000 on this debt. Although Applicant has been making regular payments on this debt, the balance has not substantially changed because the creditor continued to assess interest and fees. The owner of this debt recently changed. The new owner of the debt has agreed not to charge her interest on her balance. This change should allow her to reduce and

⁹GE 2; AE H; Tr. 37, 39.

¹⁰GE 2; Tr. 31-36.

¹¹*Id.*; AE N; AE P; Tr. 38.

¹²GE 2; GE 3; GE 4; AE J; AE R; Tr. 40-41, 53-56.

ultimately pay her debt. She pays \$100 a month on this debt, with plans to increase her payment after February 2010.¹³

Prior to issuing the SOR, the government mailed financial interrogatories to Applicant, listing three additional debts not listed in the SOR. In her response, Applicant verified that she paid the small debt and that she developed a payment plan on a credit card debt of \$3,542. She paid \$200 a month on this debt, with a final payment to be made in February 2010. She plans to apply this \$200 to her above debt plans beginning in March 2010. She developed a payment plan for \$50 a month to resolve a credit card debt of \$1,100. This debt is paid. (Tr. 51) Applicant also resolved another credit card debt.¹⁴

Applicant earns \$4,150 a month in gross income and \$2,846 a month in net income. Her monthly living expenses total approximately \$1905. Her monthly debt repayment totals \$608 a month, for total monthly expenses of \$2,513. She has \$335 a month remaining. She does not have a car payment, but did not list her monthly gasoline expense, although she did list car insurance expenses. Applicant spends nearly 25% of her net pay on debt repayment plans.¹⁵

When she completed her security clearance application, Applicant answered “no” to the questions in Section 28 about past due debts. Because she had hired a credit resolution company, had started payments in 2007, and made efforts to pay her debts, Applicant believed her debts were current. She did not have a credit report when she completed her application.¹⁶

Applicant’s senior editor and director describe her as an excellent employee. Both trust her. Her senior editor opines that she is dependable and intelligent. Her work ethic and integrity are solid. Her company vice-president and general manager wrote a letter of commendation to her for her work in an initiative. Applicant serves as a board member on a community board, a volunteer position.¹⁷

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

¹³GE 2; GE 3; G3 4; AE Q; Tr. 41, 53-56.

¹⁴GE 2; AE G.

¹⁵GE 2; AE O.

¹⁶GE 1; Tr. 42-43, 48-49.

¹⁷AE K; AE L.

potentially disqualifying conditions and mitigating conditions, which are used 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 overarching adjudicative goal is a fair, impartial, and commonsense 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel . . ." An 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 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.

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

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated delinquent debt after paying her mother's medical expenses, and was unable to pay the obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), mitigation may occur when "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." Applicant's financial worries arose five years ago and have continued. This mitigating condition is not applicable.

Under AG ¶ 20(b), it may be mitigating where "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." As noted above, Applicant's financial problems arose when her mother became seriously ill five years ago, compelling her to take a leave of absence from her job and return home to care for her mother. Applicant paid her mother's medical bills not covered by Medicare with her credit card. By 2006, she realized her finances were "out-of-control." She initiated discussions with her creditors to develop repayment plans and contacted a credit resolution company to help her correct her financial problems. For the last three years, she has worked to resolve her debts. She acted responsibly by contacting her creditors and working towards the resolution of her debts. This mitigating condition applies.

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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant contacted a credit resolution company in 2006 and started a payment plan with this company in April 2007. This company agreed to help her resolve three debts listed in the SOR. She continues to pay this company \$58 a month, which she must do for another 7 years. On her own, Applicant negotiated a payment plan with two additional creditors listed in the SOR and one other creditor not listed in the SOR. Applicant continues to pay her agreed-upon monthly payments on these debts. Applicant, on her own, also negotiated a separate payment plan for one debt under her payment plan with the credit resolution company and has complied with

her payment plan for over a year. By initiating payment plans before the SOR was issued and complying with her plans for a lengthy period of time, Applicant showed a good faith effort to resolve her debts. She lives within her monthly income and has not incurred excessive debt since 2006. I conclude these potentially mitigating conditions apply to SOR allegations 1.b through 1.f.

Applicant disagrees with the validity of the debt listed in SOR allegation 1.a because she already paid the creditor more than \$2,500. Applicant has not filed a formal disagreement with the credit reporting companies nor has she presented any verification that she wrote to this creditor and disagreed with the debt. Mitigating condition under AG ¶ 20(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” does not apply to SOR allegation 1.a.

The \$3,600 in SOR allegation 1.a. is not paid nor is it under a payment plan. Through her evidence, Applicant established her penalty for terminating the apartment lease was \$2,338. Her testimony that she already paid \$2,300 to this creditor in 2007 is credible in light of her payment history with her other creditors and the efforts she initiated to resolve her debts in 2006, 2007, and 2008. She made additional \$300 payment in 2008, but has not paid any more money on this debt as she disagrees with the creditor’s claim she owes \$3,600. Thus, this debt cannot be a source of improper pressure or duress.

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.

AG ¶ 16(a) describes conditions that could raise a security concern and may be disqualifying:

(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; and (e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal,

professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

For AG ¶ 16(a) to apply, Applicant's omission, concealment or falsification in her answer must be deliberate. The government established that Applicant omitted a material fact from her e-QIP when she answered "no" to Questions 28a, about debts over 180 days delinquent, and 28b, about debts currently 90 days overdue. This information is material to the evaluation of Applicant's trustworthiness to hold a security clearance and to her honesty. In her response, she denies, however, that she had an intent to hide this information from the government. 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 intent or 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 intent or state of mind at the time the omission occurred.¹⁸

When she completed her e-QIP in June 2008, Applicant believed that since she had negotiated payment plans for her overdue debts and had been paying on this payment plans, her debts were not overdue, but current. She paid her current bills, thus, she did not have any current bills more than 90 days overdue. Her mistaken belief about how her old debts should be considered in the security clearance process does not show an intent to hide information from the government. The government has not established intentional falsification under allegation 2.a.

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 an applicant's conduct and all relevant 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) the 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.

¹⁸See 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)).

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to applicant under the whole person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems started when she provided financial assistance to her mother. In 2004, Applicant earned \$25,000 a year. While not a high salary, she could meet her monthly expenses because she shared living arrangements and did not have a car payment. Her mother became seriously ill and required her help. Applicant took a leave of absence from her job and flew home to help her mother. Before she left to care for her mother, she made arrangements to pay her rent and other housing expenses. She has no debt related to these costs. Her mother lives on social security. When medicare did not cover her mother's medical bills, particularly her medication, Applicant charged these expenses. Between December 2004 and June 2005, Applicant traveled between her residence and her mother's very distant home, taking unpaid leave from work when necessary. She managed her bills with her very limited income.

In 2006, Applicant accepted a new position, that required her to move more than 100 miles away. She incurred moving expenses and rental expenses. She thought she was doing well, until she realized that her finances were "out-of-control." She immediately contacted a credit resolution company, and after discussions, retained its services to help her resolve three debts. For the last three years, she has paid this company monthly. It has yet to resolve any debts for her, most likely because she is paying a small monthly payment. Even though she has hired this company, she independently developed a payment plan with one company of the three in her plan with the credit resolution company and has complied with the terms of this plan.

Applicant independently developed three repayment plans for other debts, including two listed in the SOR and one not listed in the SOR. She has complied with the terms of these plans and, as of February 2010, will have paid one debt of the three debts in full. Applicant's normal everyday living expenses are paid and under control. She does not spend excessively or extravagantly. She has a track record for paying her past due debts. She knows she will be paying her past debts for sometime, describing her debt repayment as a 10-year plan. Of course, the issue is not simply whether all her debts are paid: it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. While her debts are not paid in full, her debts are

insufficient to raise security concerns, as she does not live extravagantly or beyond her income. (See AG ¶ 2(a)(1).)¹⁹

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her finances 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:	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 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.

MARY E. HENRY
Administrative Judge

¹⁹ISCR Case No. 07-06482 (App. Bd. May 21, 2008).