



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-09614  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

May 12, 2009  
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**Decision**  
\_\_\_\_\_

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct), based on 20 delinquent debts totaling about \$24,962, and Applicant's failure to disclose the delinquent debts on her security clearance application. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on June 5, 2008. On December 19, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guidelines F and E. 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

Applicant received the SOR on January 13, 2009; answered it on January 14, 2009; and requested a determination on the record. DOHA received the request on January 21, 2009. Department Counsel requested a hearing before an administrative judge on February 6, 2009 (Hearing Exhibit I), and was ready to proceed on February 16, 2009. The case was assigned to me on February 17, 2009. DOHA issued a notice of hearing on February 18, 2009, scheduling the hearing for March 6, 2009. The hearing was cancelled on March 5, 2009, because of a contract dispute with the court reporting firm.

On March 13, 2009, DOHA issued a second notice of hearing rescheduling the hearing for April 2, 2009. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Department Counsel also submitted a demonstrative exhibit summarizing his evidence, and it is marked as Hearing Exhibit II. Applicant testified and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. I granted Applicant's request to hold the record open until April 17, 2009, to enable her to submit additional documentary evidence. She timely submitted AX F through HH, which were admitted without objection. Department Counsel's comments regarding AX F through HH are attached to the record as Hearing Exhibit III. DOHA received the transcript (Tr.) on April 15, 2009. The record closed on April 17, 2009.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.c, 1.f, 1.h, 1.i, 1.p-1.t, 2.a, and 2.b. At the hearing, she stated she did not intend to admit intentionally lying on her security clearance application (Tr. 11). For the purposes of this decision, I have treated her response as denying the allegations in SOR ¶¶ 2.a and 2.b. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 28-year-old security officer employed by a federal contractor. She graduated from high school in June 1999, worked for various employers from January 2000 to August 2005, worked as an independent contractor from August 2005 to August 2006, and was unemployed from August 2006 until June 2008, when she began working for her current employer. She is unmarried, lives with her parents, and is financially responsible only for herself. She has never held a security clearance.

In response to DOHA interrogatories, Applicant submitted a personal financial statement (PFS) dated October 3, 2008, listing net monthly income of \$1,241, expenses of \$634, debt payments of \$783, and a net monthly shortfall of \$176. Her only housing expense is a monthly contribution of about \$107 for utilities (GX 4 at 5). She commented on the bottom of her PFS that some of the debts were not hers but belong to family members. Applicant's father and brother have the same name, and her name is a feminine version of her father's name (Tr. 25-26). At the hearing, she testified her net monthly income is now about \$1,400, not including overtime pay (Tr. 29). All the debts listed on her PFS were resolved after the PFS was submitted.

The SOR alleges 20 delinquent debts totaling about \$24,962, based on Applicant's credit bureau reports (CBR) dated October 15, 2008 (GX 2), and June 20, 2008 (GX 3). With the exception of the student loan alleged in SOR ¶ 1.t, all the debts had been delinquent for more than a year when she submitted her security clearance application. On her application, she answered "no" to question 28a, asking if she had been more than 180 days delinquent on any debts during the last seven years. She also answered "no" to question 28b, asking if she was currently more than 90 days delinquent on any debts. Finally, she answered "no" to question 27d, asking if she had any unpaid judgments against her in the last seven years. She did not disclose any of the debts and the unpaid judgment alleged in the SOR, even though she was aware of them. She testified she did not disclose the delinquent debts because she was afraid she would not be hired for her current job if she disclosed them (Tr. 57). She acknowledged them when she was interviewed by a security investigator in August 2008 (GX 5). She testified her immediate supervisor and branch manager are generally aware of her financial problems, but she has not told them the details (Tr. 57-58).

The table below summarizes the evidence regarding the delinquent debts alleged in the SOR.

| <b>SOR</b> | <b>Debt</b>            | <b>Amount</b> | <b>Status</b>  | <b>Evidence</b>                     |
|------------|------------------------|---------------|----------------|-------------------------------------|
| 1.a        | Satellite Dish         | \$832         | Paid           | AX J; AX S; GX 2 at 1; GX 3 at 4    |
| 1.b        | Tuition                | \$813         | Paid           | AX K; Tr. 27; GX 2 at 1; GX 3 at 12 |
| 1.c        | Cell Phone             | \$426         | Unpaid         | Tr. 39; GX 2 at 1; GX 3 at 12       |
| 1.d        | Computer               | \$1,935       | Unpaid         | Tr. 40; GX 2 at 2                   |
| 1.e        | Credit Card            | \$19          | Unpaid         | Tr. 41; GX 2 at 2; GX 3 at 10       |
| 1.f        | Tuition                | \$5,820       | Unpaid         | Tr. 41-43; GX 2 at 2; GX 3 at 11    |
| 1.g        | Tax Lien               | \$595         | Father's debt  | Tr. 43; GX 3 at 4                   |
| 1.h        | Credit Card (judgment) | \$2,568       | Father's debt  | AX I; Tr. 44; GX 3 at 4             |
| 1.i        | Credit Card            | \$1,209       | Paid           | GX 4 at 6; AX D; Tr. 45; GX 3 at 5  |
| 1.j        | Credit Card            | \$1,801       | Settled        | AX P; Tr. 47-48; GX 3 at 6          |
| 1.k        | Credit Card            | \$1,986       | Mother's debt  | AX N; AX O; GX 3 at 6               |
| 1.l        | Credit Card            | \$1,521       | Father's debt  | AX H; GX 3 at 6                     |
| 1.m        | Cell Phone             | \$314         | Same as 1.q    | Tr. 50; GX 3 at 7                   |
| 1.n        | Cell Phone             | \$1,081       | Brother's debt | Tr. 51; GX 3 at 8                   |
| 1.o        | Tuition                | \$1,968       | Brother's debt | AX L; GX 3 at 8                     |
| 1.p        | Credit Card            | \$417         | Unpaid         | Tr. 52; GX 3 at 9                   |
| 1.q        | Cell Phone             | \$197         | Paid           | AX HH; Tr. 50-51; GX 3 at 13        |
| 1.r        | Cell Phone             | \$583         | Unpaid         | Tr. 53; GX 3 at 13                  |
| 1.s        | Medical Bill           | \$50          | Unpaid         | Tr. 53; GX 3 at 14                  |
| 1.t        | Student Loan           | \$827         | Brother's debt | AX M; Tr. 54; GX 3 at 21            |

Applicant forfeited a scholarship and incurred the tuition debt alleged in SOR ¶ 1.b by failing to complete the classes (Tr. 37). She incurred the tuition debt alleged in SOR ¶ 1.f believing she would receive financial aid, but she dropped out and was billed

for the tuition (Tr. 41-42). She attributed her other delinquent debts to periods of unemployment. However, her credit reports reflect that the delinquent debts alleged in SOR ¶¶ 1.a, 1.c-1.f, 1.i, 1.m, 1.n., 1.p, and 1.q became delinquent before she became unemployed in August 2006.

Applicant paid the delinquent debt alleged in SOR ¶ 1.j two months after she was questioned about her debts by a security investigator (AX P and W). She paid the delinquent debts alleged in SOR ¶¶ 1.a, 1.b, 1.i, and 1.q after she received the notice of hearing (AX D, J, K, P, S, and HH).

## Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from

being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The SOR alleges 20 delinquent debts totaling about \$24,962. The concern under this guideline is set out in AG ¶ 18 as follows:

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.

Several potentially disqualifying conditions under this guideline are relevant. AG ¶ 19(a) is raised where there is an “inability or unwillingness to satisfy debts.” AG ¶ 19(c) is raised when there is “a history of not meeting financial obligations.” AG ¶ 19(e) is raised when there is “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.” Applicant’s financial history raises AG ¶¶ 19(a), (c), and (e), shifting the burden to her to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns based on financial problems can be mitigated by showing that “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.” AG ¶ 20(a). This mitigating

condition is not established because Applicant's delinquent debts are recent, numerous, not the result of unusual circumstances, and cast doubt on her good judgment.

Security concerns under this guideline also can be mitigated by showing that "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." AG ¶ 20(b). Applicant's unemployment from August 2006 to June 2008 was beyond her control. Nevertheless, I conclude this mitigating condition is not fully established because many of her debts became delinquent while she was still employed.

Security concerns under this guideline also can be mitigated by showing that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d). Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Applicant has resolved the debts alleged in SOR ¶¶ 1.a, 1.b, 1.i, 1.j, 1.m, and 1.q. Accordingly, I conclude this mitigating condition is established for those debts.

Security concerns under this guideline also can be mitigating by showing "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." AG ¶ 20(e). Applicant established that seven debts were incurred by family members and were erroneously reported on her CBRs. Accordingly, I conclude this mitigating condition is established for the debts alleged in SOR ¶ 1.g, 1.h, 1.k, 1.l, 1.n, 1.o, and 1.t.

### **Guideline E, Personal Conduct**

The SOR alleges Applicant falsified her security clearance application by answering "no" to three questions about her financial history and failing to disclose her delinquent debts and an unpaid judgment. The concern under this guideline is set out in AG ¶ 15 as follows:

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.

The relevant disqualifying condition in this case is "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.” AG ¶ 16(a).

When a falsification allegation is controverted, as in this case, the government has the burden of proving it. An omission, standing alone, does not prove an applicant’s 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 state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

The unpaid judgment was entered against Applicant’s father and was not her responsibility, but she admitted she intentionally concealed her own delinquent debts for fear of not being hired. Her admission raises AG ¶ 16(a).

Security concerns raised by false or misleading answers on a security clearance application may be mitigated by showing that “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” AG ¶ 17(a). This mitigating condition is not established because Applicant made no effort to correct the omissions until she was confronted with the evidence.

Security concerns also may be mitigated if “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.” AG ¶ 17(c). Applicant’s falsifications were not minor, because candor is essential in security matters. Although her conduct was not alleged under Guideline J (Criminal Conduct), I note that intentional omission of relevant and material information on her security clearance application was a violation of 10 U.S.C. § 1001, punishable by a fine or imprisonment for not more than five years. Her falsifications were recent, pertained to her current application for a clearance, and did not occur under “unique circumstances.” The record reflects no other falsifications, but her lack of candor on her security clearance applicant casts doubt on her reliability and trustworthiness. I conclude AG ¶ 17(c) is not established.

Finally, security concerns under this guideline may be mitigated if “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.” AG ¶ 17(e). Applicant receives some credit under this mitigating condition because she disclosed her financial problems to her superior, albeit in general terms.

### **Whole Person Concept**

Under the whole person concept, an 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. An 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guidelines F and E in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is relatively young and inexperienced, but she demonstrated considerable sophistication in challenging erroneous entries on her CBRs and negotiating settlements of some of her delinquent debts. She incurred many of her delinquent debts by overspending while gainfully employed. She deserves credit for making a good start toward financial stability, but her settlement of five delinquent debts alleged in the SOR did not occur until after she was questioned about them. Four of the five were not paid until she received the notice of hearing.

I have considered the Appeal Board decisions recognizing that an applicant is not required, as a matter of law, to establish resolution of each and every debt alleged in the SOR. See ADP Case No. 06-18900 (App. Bd. Jun. 6, 2008). An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). There also is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. *Id.* On the other hand, I have considered Applicant's pattern of enrolling in college classes and then dropping out, her long record of financial neglect, and her failure to begin resolving her delinquent debts until she realized her clearance and her job were at risk. Based on this record, I am not convinced she will continue resolving her delinquent debts after she is relieved of the pressure of obtaining a clearance.

Separate and apart from her financial situation, Applicant's lack of candor on her security clearance application raises serious doubts about her reliability and trustworthiness. "An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program." ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002).



After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations and personal conduct. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

|                        |                   |
|------------------------|-------------------|
| Subparagraphs 1.a-1.b: | For Applicant     |
| Subparagraphs 1.c-1.f: | Against Applicant |
| Subparagraphs 1.g-1.o: | For Applicant     |
| Subparagraph 1.p:      | Against Applicant |
| Subparagraph 1.q:      | For Applicant     |
| Subparagraphs 1.r-1.s: | Against Applicant |
| Subparagraph 1.t:      | For Applicant     |

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

|                   |                   |
|-------------------|-------------------|
| Subparagraph 2.a: | Against Applicant |
| Subparagraph 2.b: | For Applicant     |

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge