



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



In the matter of:)
)
) ISCR Case No. 08-03432
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

December 18, 2008

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations and Guideline J, Criminal Conduct. Her eligibility for a security clearance is denied.

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) Questionnaire on January 12, 2007. On August 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations and Guideline J, Criminal Conduct. 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.

On October 15, 2008, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on November 10, 2008. On November 10, 2008, Applicant and Department Counsel agreed on a hearing date of December 1, 2008, and a notice of hearing was issued on November 13, 2008. Applicant received the notice of hearing on November 18, 2008. I convened a hearing on December 1, 2008, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced seven exhibits, which were marked Ex. 1 through 7 and admitted to the record without objections. Applicant testified on her own behalf and called no witnesses. She introduced six exhibits, which were marked Ex. A through F and admitted to the record without objections.

At the conclusion of the hearing, I left the record open for one week, until close of business December 8, 2008, so that Applicant could, if she wished, provide additional information for the record. Applicant provided six additional exhibits, which were marked Ex. G through L and admitted to the record without objections. DOHA received the transcript (Tr.) of the hearing on December 8, 2008.

Findings of Fact

The SOR contains 24 allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a through 1.x) and two allegations of disqualifying conduct under Guideline J, Criminal Conduct (¶¶ 2.a and 2.b). In her Answer to the SOR, Applicant admitted 11 of the Guideline F allegations (¶¶ 1.d, 1.f, 1.h, 1.j, 1.k, 1.m, 1.n, 1.o, 1.p, 1.t, and 1.v) and denied 13 (¶¶ 1.a, 1.b, 1.c, 1.e, 1.g, 1.i, 1.l, 1.q, 1.r, 1.s, 1.u, 1.w, 1.x). She admitted one Guideline J allegation (¶ 2.b) and denied the other (¶ 2.a). Applicant's admissions are admitted herein as findings of fact. (Answer to SOR.)

Applicant is 40 years old and a college graduate. She was married in 1999 and divorced in 2005. She has custody of her two children, ages 18 and 11. She receives approximately \$482 a month in child support. (Tr. 17, 54, 104-105.)

In March 1995, Applicant was driving in traffic. A police officer, who was directing traffic, gave her hand signals indicating where she should drive. She ignored the officer's instructions. Another officer then followed her in a police car and signaled for her to pull over. She did not immediately comply. When she finally stopped, an officer came to her vehicle and banged on the window and signaled her to get out of her car. When she came out of her car, she cursed the officer. Applicant was arrested, taken into custody, and charged with Assault Police Officer. The charge was later nolle prosequi. Applicant pleaded guilty to driving in a bus lane. (Tr. 55-61; Ex. 5 at 3.)

In about February 2006, Applicant was pulled over by police because her license plate was not properly attached to her car. In checking Applicant's information in the police database, the officer who stopped Applicant learned that an arrest warrant had been issued for Applicant. The warrant specified four counts: Reckless Endangerment, Assault - First Degree, Assault - Second Degree, and Theft: Less \$500 Value. The

warrant had been issued because in January 2006 she had hit an automobile dealer's employee with her automobile and left the premises. Applicant was tried. She pleaded guilty to Assault - Second Degree and Theft: Less \$500 Value. Judgment was Stayed, and in September 2006, Applicant was awarded three years probation and ordered to pay court costs. The other two counts were nolle prosequi. (Tr. 64-68; Ex. 4, 6-7; Ex. 5.)

On her e-QIP, Applicant listed 23 employment activities between 1994 and January 2007. In 2001, she was granted an interim security clearance. Applicant reported the following recent employment pattern: In January 2007, she was employed as a Desktop Technician by a government contractor. She left that job in April 2007 and was unemployed until July 2007. From July 1 to September 1, 2007, she was employed. She had additional temporary employment from about August 22 to September 5, 2007. She was then unemployed until November 1, 2007. From November 2007 until June 30, 2008, Applicant was employed. At her hearing on December 1, 2008, she reported that she had been unemployed and unable to find work since July 2008. (Ex. 1, 15-36; Tr. 45, 47-51, 53, 104.)

Applicant reported that her financial problems began in 2001. At her security clearance hearing, she discussed debts she denied in her answer to the SOR. She admitted she owed a delinquent debt, alleged at SOR ¶ 1.a, which had been placed for collection in about May 2001 and which had not been satisfied as of March 14, 2008. She acknowledged that the delinquency was for credit card debt. The SOR alleged she owed the creditor \$2,077. While she acknowledged the debt, Applicant disputed the amount and stated she thought it was "1500 something." Applicant stated she had not paid the debt but was disputing it and requesting a settlement. The debt was shown on Applicant's credit report of March 14, 2008, with the notation that "consumer disputes this account information." (SOR; Answer to SOR; Ex. 3; Tr. 39, 73-75.)

The SOR alleged at ¶¶ 1.b and 1.n that Applicant owed two delinquent debts for parking tickets. In her answer to SOR ¶ 1.b, Applicant denied owing a parking ticket of \$250 that had been placed for collection in 2001 and that had not been satisfied as of February 6, 2007. In her answer to SOR ¶ 1.n, she admitted owing a parking ticket debt of \$150 that had been placed for collection in July 2005. At her hearing, Applicant admitted both debts and stated she was willing to pay them at some future time. (SOR; Answer to SOR; Tr. 75-76.)

The SOR alleged at ¶ 1.c that Applicant owed a creditor a debt of \$1,542, which had been charged off in September 2001 and had not been satisfied as of February 6, 2007. In her answer to the SOR, Applicant denied the debt. At her hearing, Applicant stated the creditor had made her an offer of settlement, but she sought clarification of the account number. She acknowledged that the debt remained unsatisfied. (SOR; Answer to SOR; Tr. 77-78.)

In her answer to SOR ¶ 1.d, Applicant admitted a debt of \$342 which had been placed for collection in December 2001. At her hearing, she stated she had informed the

creditor of her current financial situation. She acknowledged that the debt had not been satisfied. (SOR; Answer to SOR; Tr. 78-79.)

The SOR alleged at ¶ 1.e that Applicant owed a debt of approximately \$1,087 to a creditor on an account that had been charged off in March 2003. In her answer, Applicant denied the debt. At her hearing, Applicant stated the debt had been paid and provided documentation that purported to show the debt had been satisfied. Applicant's documentation was an offer, dated September 18, 2008, from a successor creditor offering to settle the debt for \$185. In a post-hearing submission, she provided documentation to corroborate her assertion that she had settled the debt. (SOR; Answer to SOR; Tr. 79-80; Ex. C; Ex. G.)

The SOR alleged at ¶ 1.f that Applicant owed a creditor about \$8,584 on a judgment entered against her in April 2003. The SOR also alleged that, as of June 2008, Applicant's wages had been garnished to satisfy the judgment. Applicant admitted the debt and stated that her wages had been garnished to satisfy the debt. The last time her wages were garnished to satisfy the debt was in June 2008. She still owes the creditor about \$6,000 on the debt. (Tr. 80-81; Ex. 4 at 13.)

The SOR alleges at ¶ 1.g a collection account debt of \$2,219 to a landlord. At ¶ 1.k, the SOR alleges a judgment of \$1,710 entered against Applicant by the same landlord. In his answer, Applicant denied the allegation at ¶ 1.g and admitted the judgment at ¶ 1.k. She stated that ¶ 1.g duplicated ¶ 1.k. She stated she had tried to resolve the debt, which represented rent arrearages from 2002 and 2003. The debt has not been satisfied, and Applicant failed to provide documentation to support her assertion that ¶ 1.g duplicated ¶ 1.k. As a post-hearing submission, Applicant provided a document showing that on December 9, 2008, she agreed to pay the judgment creditor \$20 a month, beginning in January 2009. (Tr. 81-83; Ex. 3 at 2; Ex. L, 2, 4.)

In response to the SOR allegation at ¶ 1.h, Applicant admitted a debt of \$3,075 on a judgment entered against her in March 2004. Applicant contacted the judgment creditor and requested a settlement. The creditor refused to settle the debt, which has not been paid. (Tr. 83.)

Applicant admitted the SOR allegations at ¶¶ 1.j, 1.m, 1.o, 1.p, and 1.t. She identified them as medical debts which had not been paid. (SOR; Answer to SOR; Tr. 84-87.)

Applicant denied a debt of \$103 alleged at SOR ¶ 1.i. At her security clearance hearing she explained she owed the debt, which she said she had paid in part. Her last payment on the debt was in early 2007. She estimated that she still owed \$91 on the debt. (SOR; Answer to SOR; Tr. 83-84.)

Applicant admitted a debt to a creditor identified at SOR ¶ 1.l. The SOR identified the amount of the debt as \$1,182 and alleged the account had been

delinquent since 2004. Applicant disputed the amount of the debt, which she has not paid. (SOR; Answer to SOR; Tr. 88-90.)

In her answer to the SOR, Applicant denied an \$18,762 debt alleged at SOR ¶ 1.q. At her hearing, she stated the debt was incurred when she purchased a new automobile in February 2005. She claimed the automobile was defective and requested that the defective automobile be replaced. In post-hearing submissions, she provided documentation to corroborate her negotiations with the automobile dealer. Her last payment on the automobile was in October 2005. She retained the automobile until mid-2007. (SOR; Answer to SOR; Tr. 90-96; Ex. I.)

In her answers to the SOR, Applicant denied debts alleged at ¶¶ 1.r, 1.s, 1.u, 1.w. and 1.x. At her hearing, she admitted the debts alleged at SOR ¶¶ 1.r and 1.s. and stated that they had not been paid. She stated she had paid the debt alleged at ¶ 1.u and reported that the creditor had no record of receiving her payment. She denied knowledge of a \$366 debt alleged at ¶ 1.w. The debt was listed on her credit report of February 6, 2007, and she failed to provide documentation to corroborate that the debt did not belong to her. She admitted the debt alleged at ¶ 1.x, and she acknowledged that it had not been paid. In her answer to the SOR, she also admitted the debt alleged at ¶ 1.v (SOR; Answer to SOR; Tr. 87-88, 96-98; Ex. 2 at 14.)

At the time of her hearing, Applicant was unemployed and had no income. She was not collecting unemployment insurance. Her monthly rent was \$1,560. She had not paid her rent since April 2008 and was being evicted from her apartment. She stated that she relied on her parents and siblings to provide her with money to meet her immediate needs. (Tr. 53-54,104, 106-107.)

In 2008, Applicant purchased a 2006 automobile for \$23,000. Her initial down payment on the vehicle was \$500. Her monthly payments were \$568. She has not been able to make her car payments since October 2008. She has been offered a hardship deferment on her car payments. She has not been able to make a payment on her existing credit card debt since June 2008. She has zero balances in her checking and savings accounts. She received credit counseling in 2006. (Tr. 100-104.)

Policies

When evaluating an Applicant's suitability for a security clearance, an 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, the administrative judge applies these guidelines 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

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 substantial delinquent debt and was unable or unwilling to pay her creditors. This evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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)) Additionally, unresolved financial delinquency might be mitigated if “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)) Still other mitigating circumstances that might be applicable include 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” (AG ¶ 20(c)) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant provided documentation to corroborate that the debt alleged at SOR ¶ 1.e had been satisfied. The record supports a conclusion that SOR ¶ 1.g duplicates SOR ¶ 1.k. Accordingly, I conclude SOR ¶¶ 1.e and 1.g. for Applicant.

Applicant admitted a history of financial difficulties that spanned the period from 2001 to the present time. Her employment history shows short-term employment and periods of unemployment. It was not clear from the record that Applicant’s apparent inability to hold long-term employment was the result of a condition beyond her control. She admitted that the delinquencies alleged on the SOR remained unresolved, resulting in substantial debt which continues to the present day, a situation which raises concerns about Applicant’s good judgment.

At the time of her hearing, Applicant had no income and was unable to pay her rent. She had recently purchased an automobile but had no income with which to make monthly payments on the automobile debt. She was unable to make monthly payments on her credit card debt.

Applicant had received financial counseling. While she admitted responsibility for her debts, it was not clear that she understood her financial problems or how to resolve them. She had no plan in place to systematically resolve her substantial delinquent debt and prepare for future contingencies. I conclude that AG ¶ 20(b) applies in part in mitigation, but that AG ¶ 20(a), AG ¶ 20(c), AG ¶ 20(d) and AG 20(e) do not apply in mitigation to the facts of Applicant's case.

Criminal Conduct

Under the Criminal Conduct guideline “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.” AG ¶ 30.

Appellant admitted criminal offenses in 1995 and 2006 for which she was arrested and charged. She is currently on probation for offenses she was charged with in 2006. Her probation runs until September 2009. This conduct raises concerns under AG ¶¶ 31(a), 31(c), and 31(d).¹

Two Criminal Conduct mitigating conditions might apply to the Appellant’s case. If “so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” AG ¶ 32(a) might apply. If “there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive involvement,” then AG ¶ 32(d) might apply.

The record demonstrates that Appellant’s criminal behavior occurred in 1995 and 2006. Her criminal conduct, Assault Police Officer, occurred in 1995 and is not recent. However, her 2006 criminal conduct, Assault Second Degree and Theft: Less \$500 Value, is recent and she will serve the probation awarded for those offenses until September 2009. While Appellant acknowledged her arrests for criminal conduct, she did not express remorse or regret for her conduct, which threatened or caused bodily harm to other human beings. Applicant’s criminal conduct continues to cast doubt on her reliability, trustworthiness, and good judgment. I conclude that AG ¶ 32(a) and AG ¶ 32 (d) do not apply to the facts of her case.

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

¹ AG ¶ 31(a) reads: “a single serious crime or multiple lesser offenses.” AG ¶ 31(c) reads: “allegation or admission or criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.” AG ¶ 31(d) reads: “individual is currently on parole or probation.”

Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h through 1.x:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	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.

Joan Caton Anthony
Administrative Judge