



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



In the matter of:)
)
-----) ISCR Case No. 08-06087
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

June 19, 2009

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) listed 17 debts totaling \$24,767. She stated one debt was over seven years old, a \$42 debt was paid, and one debt was in a payment plan. The other debts were admitted, but not resolved. She failed to disclose her delinquent debts on her security clearance application. Applicant failed to mitigate financial considerations and personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 24, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Security Clearance Application (SF 86) (Item 4). On December 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The revised adjudicative guidelines (AG) promulgated by the President on

December 29, 2005, are effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR alleges security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On December 31, 2008, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing (Item 3). A complete copy of the file of relevant material (FORM), dated February 6, 2009, was provided to her, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.¹ Applicant did not provide a response to the FORM. The case was assigned to me on June 11, 2009.

Findings of Fact²

In Applicant's response to the SOR, Applicant admitted all of the SOR allegations, except SOR ¶¶ 1.a and 1.e (Item 3). After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 61-year-old employee of a defense contractor.³ She is a supervisor in a security team. She has worked for the same employer since 1995. She attended college and was awarded a cosmetology license in 1993. She married in 1979 and divorced in 1998. She married in 1998 and divorced in 2000. She married in 2001 and is currently married. She does not have any children. She has never served in the U.S. military. She has never been fired from a job or left employment under adverse circumstances. Her file does not contain any adverse information relating to police involvement. For example, she has never been charged with a felony, any firearms or explosives offense(s), and does not have any currently pending charges. She has never been charged with any offense related to alcohol or drugs. She has not been arrested for or charged with any other misdemeanor-level offenses. There is no evidence that she has abused alcohol or drugs.

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated April 16, 2009; and Applicant's receipt is dated April 22, 2009. The DOHA transmittal letter informed Applicant that she had 30 days after her receipt to submit information.

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³The facts in this paragraph are from Applicant's October 24, 2007, security clearance application (Item 4).

Financial considerations

Applicant's SOR lists 17 delinquent debts, totaling \$24,767 as follows: ¶ 1.a (\$11,098); ¶ 1.b (\$1,735); ¶ 1.c (\$1,664); ¶ 1.d (\$250); ¶ 1.e (\$42); ¶ 1.f (\$94); ¶ 1.g (\$697); ¶ 1.h (\$776); ¶ 1.i (\$1,733); ¶ 1.j (\$2,488); ¶ 1.k (\$264); ¶ 1.l (\$490); ¶ 1.m (\$740); ¶ 1.n (\$319); ¶ 1.o (\$1,624); ¶ 1.p (\$260); and ¶ 1.q (\$493) (Item 1). Her SOR response admits all debts except she indicates the debt in SOR ¶ 1.a is denied because it is over seven years old (Item 3). She admits the debt in SOR ¶ 1.e for \$42, a department store credit card; however, she describes it as caught up (Item 3).

On July 23, 2008, DOHA provided a list of ten delinquent accounts to Applicant and asked her to verify the status of those accounts and provide proof of any payments.⁴ Applicant requested a loan; however, it was denied because of her financial situation. She provided a copy of the denial from the financial institution. She explained that she and her husband are considering filing for bankruptcy. She said she was going to address the medical debt in SOR ¶ 1.b (\$1,735), and she provided a letter from the creditor indicating automatic \$50 monthly payments would start on July 22, 2008. She did not provide proof of any payments made to the creditor in SOR ¶ 1.b. She mentioned that recently her mother and sister-in-law died; however, she did not explain why or how those deaths contributed to her financial predicament.

Applicant did not describe any financial counseling that she received. Applicant did not provide any documentation showing she disputed the validity of any debts.

Falsification of Security Clearance Application

Applicant signed her security clearance application on October 24, 2007. In regard to her financial record, Applicant disclosed that she was involved in a repossession in March 2003 (Item 4). However, when asked about her delinquent debts, Applicant incorrectly responded, "No" to questions 28a and 28b (Item 4), which asked:

Section 28: Your Financial Delinquencies

- a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?
- b. Are you currently over 90 days delinquent on any debt(s)?

Applicant's security clearance application contains the following admonition:

Certification That My Answers Are True

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good

⁴The facts in this paragraph are from Applicant's response to DOHA interrogatories, dated July 23, 2008 (Item 7).

faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See section 1001 of title 18, United States Code).

(emphasis in original) (Item 4). Immediately below this admonition is Applicant's signature. A credit report, dated November 15, 2007, lists numerous debts that were currently past due, and that were past due for more than 180 days (on November 15, 2007), including many debts that were past due for more than a year (Item 5). Applicant's SOR response admits falsification of her October 24, 2007 security clearance application (Item 3).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 Applicant's 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 [A]pplicant concerned." See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. 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). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines F (Financial Considerations) and E (Personal Conduct).

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in her credit reports, in her response to DOHA interrogatories, and in her SOR response. As indicated in SOR ¶¶ 1.a to 1.q, she had 17 delinquent debts totaling about \$24,767 disclosed as potential security concerns. She provided enough information to reduce security concerns on two debts (she paid one debt and the other debt was in a payment plan). Her financial difficulties extended over several years and continue today. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct does not warrant full application of any mitigating conditions because she did not act more aggressively and responsibly to resolve her 17 delinquent debts. Her delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Applicant does not receive credit under AG ¶ 20(a) because she did not establish that her financial problems "occurred under such circumstances that [they are] unlikely to recur." There is some residual doubt about whether she is fully committed to resolving her delinquent SOR debts and is making adequate steps to do so. AG ¶ 20(e) does not apply because she did not provide any documentation disputing any of the SOR debts.

AG ¶ 20(b) partially applies. Applicant's financial situation was probably damaged by deaths in her family and divorce. The cost of funerals and resolving estates is very expensive. Similarly, divorce results in a division of assets, property and debts. Divorce can cause financial hardship. She evidently lacks sufficient income to address most of her delinquent SOR debts. She has not provided sufficient evidence to establish that she acted responsibly under the circumstances with respect to her delinquent debts.⁵

⁵"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App.

AG ¶ 20(c) partially applies. Although Applicant did not receive formal financial counseling, she probably received some financial advice from the financial institution that denied her loan, and has otherwise learned about financial issues. She started the process of paying the debt in SOR ¶ 1.b. Applicant has resolved the debt in SOR ¶ 1.e (\$42) by paying it. She did not provide any evidence of any arrangements to pay any of the other SOR debts. These are some initial, positive “indications that the problem is being resolved or is under control.” She has also established some mitigation under AG ¶ 20(d) because Applicant showed some good faith⁶ in the resolution of her SOR debts by attempting to secure a loan to repay her creditors.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve her delinquent debts. She attempted to borrow funds to pay her creditors. She generated a payment plan for one delinquent SOR debt (SOR ¶ 1.b) and said she paid one SOR debt for \$42 (SOR ¶ 1.e). These steps are simply inadequate to fully mitigate financial considerations security concerns.

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 describes two conditions that could raise a security concern and may be disqualifying in this case:

Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁶The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

(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

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant failed to disclose most of her delinquent debts on her October 24, 2007, security clearance application. She admitted in her SOR response that her answers were false. AG ¶¶ 16(a) and 16(b) both apply.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) 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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions apply. The falsification is established. She admitted the falsification of her security clearance application without elaboration or further explanation.⁷ Applicant has not provided sufficient information to refute or un-substantiate the allegations in SOR ¶¶ 2.a and 2.b.

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) 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.

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. AG ¶ 2(c). 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 that guideline, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of her clearance. Applicant deserves substantial credit for volunteering to support the Department of Defense in the field of security. She has served well, rising to a supervisory position. The same employer has retained her service for 13 years. This longevity speaks very well for her contributions to her employer. There is no evidence that she has a criminal record or has ever violated security. There is every indication

⁷The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

that she is loyal to the United States, the Department of Defense, her employer and that she is an honorable person. There were no allegations of security violations. She does not abuse alcohol or illegal drugs. She has attended college. She is evidently not sophisticated in the area of finance. She made mistakes, and her debts became delinquent. Expenses from her divorce and deaths in her family may have contributed to her financial woes. She probably learned some financial information when she applied for a loan and reviewed the DOHA documentation. She paid one small debt and placed another debt into a payment plan. She has a track record of successful employment working for a DoD contractor. These factors show some responsibility, rehabilitation, and mitigation.

The whole person factors against reinstatement of Applicant's clearance are more substantial. Failure to pay or resolve his just debts is not prudent or responsible. Applicant has a lengthy history of financial problems. She began to have financial difficulties several years ago, when multiple debts became delinquent. In July 2008, she received DOHA interrogatories and in December 2008, she received the SOR. She had ample opportunity to contact more of her SOR creditors and to make greater progress in the resolution of her SOR debts. She paid one small delinquent SOR debt for \$42, and started a \$50 monthly payment plan on another SOR debt. She attempted to obtain a loan to repay her creditors. She is thinking about filing for bankruptcy. She made insufficient progress over the last 18 months to resolve her delinquent debts, even though she had steady employment and ample opportunity to contact her creditors and provide documentation. She was on clear notice from her receipt of DOHA interrogatories and even more so after she received the SOR that she needed to show substantial progress in the resolution of her delinquent debts; however, she made insufficient effort to accomplish this security responsibility.

Applicant's falsification of her security clearance application is not mitigated. She admitted that she falsified her security clearance application, and she did not provide any explanation for her conduct. The falsification occurred in October 2007, which is still relatively recent.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has not mitigated the financial considerations and personal conduct security concerns. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has failed to mitigate or overcome the government's case. For the reasons stated, I conclude she is not eligible for access to classified information.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f to 1.q:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraphs 2.a and 2.b:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

MARK HARVEY
Administrative Judge