



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-09116
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

July 13, 2010

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On August 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal 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 adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR with an undated response, and elected to have her case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on December 1, 2009. The FORM was mailed to Applicant, and it was received on December 10, 2010. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on May 19, 2010.

Findings of Fact

In Applicant's answer to the SOR, she denied ¶¶ 1.c, 1.k, 2.c, and 2.e - 2.g, and admitted the remaining allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 36 years old. She is currently married, but separated and has four children. She is the primary support for her children, although she does receive \$822 per month from her estranged husband for child and spousal support. Since 2008, she has worked for a defense contractor.¹ In response to government interrogatories, Applicant stated her financial difficulties occurred because the Army relocated her husband to a new post in 2007 and she could not find work in their new location for about seven months. However, when she became employed her new position paid considerably less than what she had been earning (\$7.50 per hour compared to \$18 per hour). The Applicant claims most of her debts became delinquent during her periods of unemployment and underemployment. Several debts do, however, predate her unemployment/underemployment period of 2007-2008 (SOR ¶¶ 1.o and 1.q).²

The debts listed in the SOR are supported by three credit reports dated July 21, 2009, May 3, 2008, and April 29, 2008.³ The total debt alleged in the SOR is approximately \$40,000. Applicant denied two of the seventeen debts (SOR ¶¶ 1.c and 1.k). The first is a collection debt for a cable provider. Applicant fails to provide proof of payment for this debt, but she asserts that she still has this cable service. For the second debt, she does provide documentation showing the account has a zero balance.⁴ Applicant admitted the remainder of the debts and failed to show proof of payment on any of the debts. She submitted a proposed payment plan with a debt consolidation service that would cover approximately \$4,800 of her existing debt, but there was no evidence to support that she actually executed such a plan.⁵

¹ Items 5, 6.

² *Id.*

³ Items 7-9.

⁴ Item 6.

⁵ *Id.*

Applicant's current financial picture shows that her net income (\$4,091 per month) exceeds her net expenses (\$3,050 per month) by about \$1,000 per month. However, there is no evidence showing that she applies any of this discretionary amount to her debts.⁶ Applicant stated that she has been getting financial advice, but other than mentioning the debt consolidation service, she did not specifically say who or what organization was providing that advice.⁷

The personal conduct concerns arise out of Applicant's four arrests in July 1996, June 2002, November 2002, and February 2008 (SOR ¶¶ 2.a – 2.d). Those arrests include: interfering with an emergency call in February 2008 (sentenced to probation); two arrests for assault in November and June 2002, both incidents were investigated and reported by the Fort Hood, Texas, Provost Marshal's Office (no charges filed in either case); and, a misdemeanor fraudulent check charge in July 1996 (charges filed, but no information regarding disposition). The evidence in the record establishes these arrests, including the one disputed by Applicant (she disputed one of the 2002 arrests, although she could not say which one).⁸ The remaining personal conduct allegations concern whether Applicant falsified answers to security clearance applications (SF-86) on April 16, 2008, and August 6, 1997, and on an enlistment eligibility questionnaire on August 6, 1997 (SOR ¶¶ 2.e – 2.g). In all three instances Applicant was asked about prior arrests. In answering the April 16, 2008, SF-86, although she did list her most recent arrest for interfering with an emergency call, she failed to list her two arrests for assault on November 11, 2002 and June 8, 2002.⁹ Likewise, when she completed her August 6, 1997, SF-86 and her enlistment questionnaire on the same date, she failed to list her arrest for fraudulent checks from July 31, 1996.¹⁰ Applicant claims that she did not deliberately falsify these various forms, but instead simply forgot about the arrests at the time she completed the forms.¹¹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

⁶ Item 6.

⁷ Item 4.

⁸ Items 10-12.

⁹ Items 5,11-12.

¹⁰ Items 5, 13-14.

¹¹ Item 3.

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, and has the ultimate burden of persuasion to obtain 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 that an applicant may deliberately or inadvertently fail to 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. I have considered all of them under AG ¶ 19 and especially considered the following:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has approximately \$40,000 in delinquent debt that remains unpaid or unresolved. I find both disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considered the following:

- (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.

Except for the debt in SOR ¶ 1.k, Applicant did not provide evidence that she paid or resolved any of her delinquent debts. Therefore, her behavior is recent and the delinquent debts remain a concern. I find mitigating condition AG ¶ 20(a) does not apply because Applicant's debts remain unresolved. Applicant provided some information that

she experienced periods of unemployment/underemployment and is going through a separation/divorce from her husband. However, I am unable to determine that her financial problems were beyond her control, particularly since several of the debts occurred before her employment and domestic problems occurred, or that she acted responsibly under the circumstances. I find AG ¶ 20(b) does not apply. There is some evidence Applicant contacted a debt consolidation service for some of her debt, but there is no evidence to show that she executed any agreement with the service or that the debts are otherwise being resolved. There is no clear evidence that Applicant's financial problems are being resolved or under control. Other than showing that the debt listed at SOR ¶ 1.k has a zero balance, she did not provide evidence that she has made a good-faith effort to pay her delinquent debts or has attempted to resolve them. I find AG ¶ 20(d) applies to SOR debts ¶ 1.k, but not to the remainder of the SOR debts. Applicant disputed the debt in SOR ¶ 1.c, but did not provide any proof to show she paid the debt or resolved it. She argues that since she currently has service from this cable provider, then she must be current on obligations to them. I do not find this argument convincing. I find AG ¶ 20(e) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for 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 conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Between 1996 and February 2008, Applicant was arrested four times for writing fraudulent checks, committing two assaults, and interfering with an emergency call. As a whole, these four criminal-related actions call into question Applicant's judgment. AG ¶ 16(c) applies to SOR ¶¶ 2.a – 2.d. In August 1997, Applicant completed an SF-86 and

an enlistment document that asked her about prior arrests. She was charged with a misdemeanor for writing fraudulent checks on July 31, 2006, just one year prior to the date she filled out the two respective forms. I find Applicant's excuse of not remembering the arrest when she filled out the forms implausible. In April 2008, Applicant filled out another SF-86 and failed to list her two assault arrests that occurred in June and November of 2002. She also claims to have forgotten about these arrests when she filled out the SF-86. Again, given that there were two similar incidents where the police were called to the scene and wrote out detailed reports, I find Applicant's lack of memory implausible. AG ¶ 16(a) applies to SOR ¶¶ 2.e – 2.g.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and especially considered the following:

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

The record is absent any evidence that Applicant made any efforts to correct her omissions before being notified of her falsifications. AG ¶ 17(a) does not apply. Although each arrest by itself might be characterized as minor, the cumulative effect of four arrests over a 12-year time frame calls into question Applicant's good judgment. AG ¶ 17(c) does not apply.

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have considered that the Applicant experienced periods of unemployment/underemployment, and her current separation and possible divorce. I have also considered that she supports her four children. Except for one debt showing a zero balance, she did not provide documentation to show she paid any of her delinquent debts. She did not provide information that she has an executed a repayment plan or settlement agreement with any of the creditors. Additionally, her involvement in four separate arrests over a 12-year period reflects her poor judgment. She also engaged in deliberate falsification on three separate occasions when she failed to list her past criminal actions on security clearance questionnaires and enlistment paperwork. Therefore, she failed to provide sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations and Guideline E, 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.j:	Against Applicant
Subparagraphs 1.k:	For Applicant
Subparagraphs 1.l-1.q:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.g:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Robert E. Coacher
Administrative Judge