



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



In the matter of:)
)
) ISCR Case No. 09-00195
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

June 30, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant lacks a track record of financial responsibility. Moreover, she deliberately falsified her security clearance application. Eligibility for access to classified information is denied.

Statement of the Case

On September 8, 2008, Applicant submitted a security clearance application. On January 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised; and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline 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 her, and recommended referral to an administrative judge to determine whether a clearance should be granted or denied.

On January 28, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on March 7, 2010. DOHA issued a notice of hearing on March 15, 2010. The hearing was convened as scheduled on April 15, 2010. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified and submitted Exhibits (AE) 1 through 4, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 23, 2010.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.c-1.i, 1.k, 1.l, and 1.n-1.q. At her hearing, she recanted her admissions and denied SOR ¶¶ 1.g, 1.l, and 1.o. I considered these allegations denied. She also denied SOR ¶¶ 1.b, 1.j, 1.m, and 2.a. Her admissions are incorporated as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 40-year-old software engineer employed by a defense contractor. She is single and has no children. Shortly after graduating from high school, she enlisted in the U.S. Army where she served from 1987 until 2002. At the time of her honorable discharge, she had achieved the pay grade of E-5. Her gross annual salary was around \$50,000. While in the Army, she attended college and completed an associate's degree.

After her discharge from the Army, Applicant was unemployed and underemployed for one year (March 2002-March 2003). She worked for a temporary employment agency during approximately 70% of the year, and was unemployed 30% of the year. Her gross income was around \$30,000 a year. She received unemployment benefits while unemployed. In March 2003, she found a full-time job, where she worked for approximately two years with a gross yearly salary of \$51,000. She also joined the National Guard where she served until March 2006. In the National Guard she earned around \$200 a month for her weekend drills.

Applicant was activated and deployed to a combat zone in a Middle East country from March 2005 until her second honorable discharge in March 2006. Her gross annual salary was around \$50,000. Pursuant to her military service, Applicant had access to classified information at the secret level from 1987 until 1997, and at the top secret level from 1997 until 2006. After her second discharge, Applicant was unemployed for approximately six months, and received unemployment benefits. Her access to classified information was continued when she started working for her current employer in June 2006. There is no evidence that Applicant has compromised or caused others to compromise classified information. When she started working for her

current employer she was earning \$52,000 gross annual pay. As of her hearing date, she was earning around \$62,000 in gross annual pay. She stated that after paying her day-to-day expenses and some debts, she has \$370 of monthly discretionary income.

In September 2008, Applicant submitted a security clearance application. Section 27 of the security clearance application asked Applicant whether in the last seven years she had her wages garnished, any property repossessed, a lien placed against her for failing to pay taxes or other debts, or any unpaid judgments. Section 28 asked Applicant whether in the last seven years she had been over 180 days delinquent on any debts, and whether she was currently over 90 days delinquent on any debts. Applicant answered "No" to all the above financial questions.

Applicant's background investigation addressed her financial situation. It included the review of September 2008 and May 2009 credit reports, which revealed the judgments and delinquent or charged off debts alleged in the SOR. In her response to DOHA financial interrogatories, Applicant claimed she did not disclose her judgments and delinquent debts in her 2008 security clearance application because she was unaware of some of the debts and others were not her debts. She also claimed she was in the process of disputing the validity of some of the debts and making settlement arrangements on others. (GE 2)

The SOR alleges 17 delinquent or charged off debts totaling \$48,000, which include three judgments and one state tax lien.

SOR ¶¶ 1.a (\$690), 1.h (\$690), and 1.i (\$674), allege judgments filed against Applicant in August 2002, January 2003, and February 2003, for unpaid rent. Applicant admitted she rented an apartment from the creditor from 1999 until 2002. She explained that when she was discharged from the Army, she was unemployed and her unemployment benefits were not sufficient for her to pay her rent. As of her hearing date, these three judgments were unresolved.

Applicant initially claimed she did not know about these debts and the judgments because she had not received any paperwork on the debts or judgments. She later admitted knowing she had not paid the rent, but continued to claim she was not aware the judgments had been filed against her. After she received DOHA's interrogatories, she disputed these judgments via the credit bureaus. The judgments were verified as her valid judgments. (AE 3) She claimed she then attempted to contact the court about the judgments, but was unsuccessful. She stated she intends to pay the judgments some time in the future. She claimed she cannot address the judgments at this time because she is taking care of her student loans first and she does not have the financial means to address all debts at the same time.

AE 2 shows Applicant had two other judgments filed against her in January-February 2005 for \$585 and \$1,263. She paid these judgments in late 2005.

SOR ¶¶ 1.b and 1.j allege the same (\$29) delinquent debt to a utility company. Applicant disputed it via a credit bureau agency, allegedly because it was not her debt. It was deleted from her credit report. (AE 3) She did not disclose this debt in her security clearance application because it was not her debt.

SOR ¶¶ 1.c - 1.f allege Applicant's four student loans from 1999-2002, for a total of approximately \$17,800. Applicant explained her student loans became delinquent in 2005-2006, while she was deployed with the Army. She entered into a nine-month loan rehabilitation program and successfully completed it. At some undisclosed time, she again became delinquent because she did not have sufficient income to pay the loans and her day-to-day living expenses. In May 2009, Applicant entered into a second loan rehabilitation program. Between May 2009 and March 2010, she made 14 payments of \$185 pursuant to her loan rehabilitation agreement. (AE 1, 4) She testified she successfully completed this rehabilitation program in March 2010. She has made no payments since then waiting for a new creditor to send her a bill. She believes her payments will start around May 2010. Applicant claimed she did not disclose her delinquent student loans because at the time she submitted her security clearance application she was participating in a loan rehabilitation program and her loans were current.

Applicant bounced two checks she issued in October and December 2009, payable to the student loan rehabilitation program creditor. She claimed the October check bounced because she changed banks. The December check bounced because the creditor presented the check for payment before the posted date. (Tr. 48)

In her answer to the SOR, Applicant admitted SOR ¶¶ 1.g (\$627), 1.i (\$2,193), and 1.o (\$1,517). At her hearing, she denied SOR ¶ 1.g because she never had an account with that telephone service provider. Initially, she testified she had not disputed the debt. (Tr. 50) Later, she testified she had disputed the debt and promised to provide post-hearing documentary evidence of her dispute. (Tr. 97) She also claimed that in 2009, she attempted to contact the creditor, but the creditor never returned her calls. She stated she did not disclose this debt in her security clearance application because it was not her debt. This is Applicant's unresolved debt.

At her hearing, she denied SOR ¶ 1.i because it was not her account. She disputed SOR ¶ 1.i, and it was removed from her credit report. (AE 3) There are no explanations as to why it was removed.

Applicant testified she does not know whether the credit card debt alleged in SOR ¶ 1.o is her debt. Because it is not listed in her latest credit report (not presented as evidence), she has done nothing to address or resolve it. She presented no documentary evidence to show a reasonable basis for her alleged dispute. This is Applicant's unresolved debt. She stated that she did not disclose this debt in her security clearance application because it was not her debt.

SOR ¶¶ 1.k (\$1,030) and 1.n (\$2,091) allege the same delinquent credit card debt now in collection. Applicant admitted this was her credit card account, opened in January 2000, which became delinquent in September 2002 (before she left the Army), because she could not afford to pay it. She claimed she settled the debt for \$400 in 2002. She presented no documentary evidence to support her claim. She did not disclose this debt in her security clearance application because she claimed it was paid. AE 3 shows Applicant disputed this account in 2009 via a credit bureau. It was verified as Applicant's delinquent account. This is Applicant's unresolved debt.

SOR ¶ 1.m (\$190) alleges a state tax lien filed against her in January 1990. Applicant claimed it was not her lien and that she disputed it. She claimed she had documentary evidence at home showing she disputed the debt and that it was removed. She promised to submit the documentary evidence after her hearing. She failed to do so. She did not disclose this debt in her security clearance application because she claimed it was not her debt. This is Applicant's unresolved debt.

SOR ¶ 1.p alleges a collection for \$20,262 resulting from Applicant's repossessed truck. She bought the truck in 1999 while in the Army. In 2002, she was unemployed and could not afford the payments and the truck was repossessed. She claimed she was not billed for the remainder debt after the truck was sold until 2003, when she was contacted by the collection agency. At the time, she did not have the financial means to address the debt. She also claimed that in April-May 2009, she established a payment arrangement and made an undetermined number of \$300 payments. She stopped making the payments because she could not afford them. She has had no further contact with the creditor. Applicant claimed she did not disclose this debt because she mistakenly believed it was outside of the seven-year period asked in the security clearance application. This debt is unresolved.

SOR ¶ 1.q alleges a collection for \$571 resulting from cable TV services she received in 2002-2003. The debt has been delinquent since. Applicant has done nothing to resolve this debt. She failed to disclose this debt in her security clearance application.

Applicant attributed her financial problems to her periods of unemployment and underemployment. In January 2010, she considered participating in a debt payment and consolidation program, but discarded the idea because of the required program fee and her belief that she can make the payments on her own. Applicant has not participated in financial counseling.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. They provide explanations for each guideline and list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's goal is to achieve a fair, impartial, and commonsense decision. 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. AG ¶ 2(c).

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 the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence."¹ Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government.²

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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* Executive Order 12968 (Aug. 2, 1995), Section 3.

¹ See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "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).

² See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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 ¶ 18.

Considering the evidence as a whole, I find SOR ¶¶ 1.a, 1.c-1.i, 1.k, 1.m-1.q are Applicant's debts as established by her testimony or the credit reports. She has a history of financial problems dating back to 1999. She has been unable or unwilling to resolve most of the delinquent debts alleged in the SOR since she acquired them. AG ¶ 19(a): "inability or unwillingness to satisfy debts" and AG ¶ 19(c): "a history of not meeting financial obligations" apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;
- (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; and
- (f) the affluence resulted from a legal source of income.

Applicant's two periods of unemployment and underemployment established circumstances beyond her control, which contributed to her inability to pay her debts. I

find AG ¶ 20(b) partially applies, but does not fully mitigate the financial concerns. Applicant's evidence is not sufficient to show she acted responsibly under the circumstances. Applicant has been consistently and fully employed since June 2006, earning at least \$52,000 a year. Notwithstanding, except for making payments toward her student loans and disputing some of her debts, she presented little documentary evidence of good-faith efforts to pay, settle, or resolve her SOR delinquent debts.

I note Applicant disputed all of her debts in 2009, including those she knew were her valid debts. The only documentary evidence presented of paid debts was the two judgments she paid in late 2005. Applicant is not in control of her financial situation and does not have a track record of financial responsibility. Because she has not participated in financial counseling, her financial problems are likely to continue. I find she does not understand the importance of having and maintaining financial responsibility. Her behavior shows lack of candor and reliability, and an unwillingness to pay her debts. None of the mitigating circumstances apply.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

Applicant deliberately falsified material facts on her September 2008 security clearance application when she failed to disclose the debts and judgments alleged in the SOR. She offers a variety of reasons for failing to disclose her financial difficulties. These reasons do not account for all her delinquent accounts and ignore the fact that she had to have known she had delinquent accounts the past that fell within the scope of the financial questions.

Considering the record evidence as a whole, including her education, her years of military service and working for government contractors, the Government's expressed concerns during her background investigation, the number and value of the debts, and her demeanor and conflicting testimony, her statement that her falsification was not deliberate is not credible.

Her behavior triggers the applicability of disqualifying conditions AG ¶ 16(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 of status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;" and AG ¶ 16(e) "personal conduct or concealment of information about one's conduct, that

creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.”

AG ¶ 17 lists seven conditions that could potentially mitigate the personal conduct security concerns:

(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.

After considering the above mitigating conditions, I find none apply. The only mitigating condition potentially applicable is AG ¶ 17(a), but Applicant did not disclose her debts until after she was confronted. Applicant falsified her 2008 security clearance application. Her falsification is a serious offense (felony-level),³ is relatively recent, and casts doubt on her reliability, trustworthiness, and judgment.

³ See 18 U.S.C. 1001.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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 in my whole-person analysis my comments on the analysis of Guidelines F and E.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant honorably served the United States for approximately 18 years. She has worked for a government contractor since 2006, and possessed a security clearance for approximately 22 years. There is no evidence she has ever compromised or caused others to compromise classified information. These factors show some responsibility, good judgment, and mitigation. Applicant also established some circumstances beyond her control, which contributed to her inability to pay her debts.

Notwithstanding, Applicant's evidence is not sufficient to show she acted responsibly under the circumstances. She presented insufficient documentary evidence of debt payments, contacts with creditors, negotiations to resolve her SOR debts, or of other efforts to resolve her debts. Because of her professional experience, she knew or should have known of the Government's concerns about her finances during all the time she possessed a security clearance. Applicant has not demonstrated she understands the importance of having and maintaining financial responsibility. Moreover, Applicant deliberately falsified her 2008 security clearance application when she failed to fully disclose her financial problems. Her overall behavior shows lack of judgment, candor, and reliability, and an unwillingness to comply with the law.

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.g-1i, 1.k, 1.m-1.q:	Against Applicant
Subparagraphs 1.b-1.f, 1.j, 1.n, and 1.l:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

JUAN J. RIVERA
Administrative Judge