



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



In the matter of:)
)
) ISCR Case No. 09-02938
)
)
Applicant for Security Clearance)

Appearances

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

June 14, 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 November 18, 2008, Applicant submitted a security clearance application. On September 24, 2009, 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 October 29, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on February 2, 2010. DOHA issued a notice of hearing on February 19, 2010. The hearing was convened as scheduled on March 10, 2010. The Government offered Government Exhibits (GE) 1 through 15, which were admitted and made part of the record. Applicant testified, presented one witness, and submitted Applicant Exhibits (AE) 1 through 7, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 16, 2010.

Findings of Fact

Applicant admitted the six allegations in SOR ¶ 1. She provided some comments and explanations about the two allegations in SOR ¶ 2, but failed to admit or deny them. I consider both allegations denied. 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 38-year-old senior administrative assistant employed by a defense contractor. She has completed two semesters of college and has approximately 600 hours of hands-on training in computer information systems. Pursuant to her employment, she has had access to classified information at the top secret level since September 2004. There is no evidence that Applicant has compromised or caused others to compromise classified information.

Applicant married her husband in 1991, and they were divorced in 1995. She has sole custody of her 16-year-old son. Despite a child support court order, through the years Applicant's ex-husband has provided little or no support for her son. Applicant's son testified about the financial hardships that he and his mother have suffered as a result of his father's failure to provide support. Applicant is a devoted mother.

Applicant filed for Chapter 7 bankruptcy protection in 1999, and she was discharged of all of her dischargeable debts in February 2002. She was forced to file for bankruptcy protection because she had limited earnings, she was receiving little or no support from her ex-husband, and she was the sole provider for her and her son.

In 2003, Applicant submitted a security clearance application. During the background investigation, she was confronted by Defense Investigative Service special agents about her then financial problems. In her March and August 2003 statements (GEs 11, 12), Applicant attributed her financial problems to being a divorced, working mother; lack of consistent child support over the last nine years; her limited earnings; and her substantial day-to-day living expenses, which included child care. She explained the reasons behind a repossessed car and the remaining deficiency balance.

She also provided information about her participation in financial counseling, a debt payment and consolidation program she entered into, and her plans to establish control of her finances, pay her delinquent debts, and avoid future financial problems. Based on her promises to resolve her financial problems, Applicant was granted a top secret clearance.

In November 2008, Applicant submitted another security clearance application for her periodic review. In her clearance application, Applicant answered "No" to financial questions asking whether in the last seven years she had liens filed against her for failing to pay taxes or other debts, she had unpaid judgments, she had been more than 180 days delinquent on any debt, or if she was currently more than 90 days delinquent on any debt (Sections 27 and 28 of her application). She disclosed that her wages had been garnished to satisfy one judgment (not alleged in the SOR) resulting from a delinquent credit card she used to pay for her son's expenses.

Applicant's background investigation addressed her financial situation, and it revealed Applicant filed for Chapter 7 bankruptcy protection in November 1999, and was discharged of all dischargeable debts in February 2000. It also revealed the five delinquent debts alleged in the SOR. The unpaid judgment alleged in SOR ¶ 1.b (\$2,199) originated from a pay-day loan in 2006-2007. Applicant's payment checks bounced numerous times and she was subject to penalties and overcharges. In 2007, the creditor filed suit against her to collect the debt and she was served with the court documents. She elected not to appear in court and a judgment was approved against her. In July 2009, she contacted the creditor and established a payment plan. Applicant failed to honor the payment plan because she did not have money to spare. (Tr. 131) As of her hearing date, this debt was unresolved. Applicant promised to include this debt in a debt consolidation and payment plan she intends to establish in the near future. She claimed that previously she was not making enough money to pay the debt and her day-to-day living expenses. She averred she is now in a better financial position to pay the debt through the debt payment program.

The delinquent debt alleged in SOR ¶ 1.c (\$655) originated from telephone services Applicant received and failed to pay in 2003. In her July 2009 response to DOHA interrogatories, she claimed she settled the debt for \$327, and implied she would mail the creditor the check not later than August 2009. At her hearing, she again promised to pay the debt as soon as she receives an anticipated child support check. She presented no evidence to show she resolved this debt.

SOR ¶ 1.d (\$5,600) alleges a delinquent deficiency balance resulting from the sale of Applicant's repossessed car in 2003. In both of her 2003 statements to a background investigator (GE 11 and 12), Applicant promised to resolve this debt. She claimed in 2003, she was offered a settlement, but she did not have the financial means to take the offer. In 2003, she stated she was planning on including the debt in her then debt consolidation program. As of the hearing date, she had not resolved this debt.

In 2003, Applicant took a \$5,000 personal loan “to catch up with other expenses.” She failed to repay the loan and the creditor obtained a judgment against her in 2004 (SOR ¶ 1.e (\$3,842)). She claimed she was offered a \$4,000 settlement, but she could not take the offer because she did not have the funds. She is planning on including the debt in her anticipated debt consolidation program.

In 2002, Applicant failed to pay her rent. In 2004, the creditor obtained a judgment against her to recover for her past due rent (SOR ¶ 1.f (\$1,506)). Applicant claimed she paid the judgment by wage garnishment in 2006. Applicant’s documentary evidence is not sufficient to show the wage garnishments were applied to this debt, or that the debt has been resolved.

At her hearing, Applicant admitted that during the last two to three years she has been regularly late paying her rent, and receives consistent eviction notices from the landlord. As of her hearing date, she was two months late on her rent payment. (Tr. 140) She claimed her two unemployment periods caused her to be late on her rent payments.

Applicant was employed from 2000 to 2004, with a yearly salary of approximately \$38,000. She was forced to resign from that job under penalty of being fired. She received six-months of full salary as severance pay. From November 2004 to September 2005, she was employed with a yearly salary of \$55,000. She received two pay checks for approximately five months. From September 2005 to August 2006, she was employed with a yearly salary of \$60,000. And, from June 2006 to January 2007, she was making \$67,000. Applicant was unemployed for two months.

Applicant started a new job in February 2007 with a yearly salary of \$74,000. She was fired from this job in February 2008 and was unemployed for two months. She failed to disclose in her November 2008 application that she was fired from this job. Instead, she stated in her application that she resigned from the job. When asked why she failed to disclose she was fired from the job, she stated she did not know why. Applicant found employment in March 2008, and worked for this employer until September 2008 with a yearly salary of \$74,000. She started working for her current employer in September 2008 with a yearly salary of \$90,000. She has been making approximately \$94,000 a year thereafter. Applicant claimed she has performed well for government contractors and is a good employee.

In 2003, Applicant contracted the services of a debt consolidation company to assist her in the resolution of her then delinquent debts. She also claimed she received some financial counseling. She made one payment of \$200 to the debt consolidation company. There is no documentary evidence that she or the debt consolidation company made any payments to her SOR creditors. She presented no documentary evidence to show she made any other payments into her debt consolidation plan. She presented no documentary evidence of any additional financial counseling since 2003.

Applicant purchased a new car in 2007. She needed a reliable car for her work-related travel. In 2009, she was behind on her car payments and was about to have it repossessed. She paid \$1,685 in May-June 2009, to bring the car loan to current status and to forestall the repossession. The creditor reduced her monthly car payments so that she could afford the payments.

At her hearing, Applicant testified she intends to retain the services of a debt consolidation company in the near future to help her resolve her debts. She contacted the debt consolidation company a few days before her hearing, used their services to prepare a budget, and needs to provide them with additional information. She has yet to sign a contract for their services. Applicant's budget shows she currently has a negative \$193 monthly net remainder without considering any possible fees and payments she would have to make on her future debt repayment plan. Applicant stated she intends to stop entertaining, reduce eating outside her home, entertainment, and hair and nail expenses. Applicant expressed remorse for her financial problems and promised to do better.

Applicant took a vacation to Las Vegas in 2005 and went on a Caribbean cruise in 2006. She owes the Internal Revenue Service approximately \$6,000 in past due taxes, and she owes state taxes of \$1,200. She claimed she established agreements to start paying on both debts in March 2010. She presented no documentary evidence to support her claims.

In her answer to the SOR and at her hearing, Applicant denied she falsified her clearance application. She claimed she was "ill prepared" because she did not have a current credit report, she completed the clearance application in haste, and she did not have accurate information because she had disputed many of her delinquent debts. Applicant presented no documentary evidence to show she disputed any debts. Considering the evidence as a whole, Applicant deliberately falsified her November 2008 security clearance application as alleged in the SOR.

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.

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.

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 (4 th Cir. 1994).

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

Applicant has a history of financial problems dating back to 1999, when she filed for bankruptcy protection. She has been unable or unwilling to resolve the delinquent debts alleged in the SOR since 2003. She presented little documentary evidence of good-faith efforts to pay, settle, or resolve her delinquent debts. 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 established some circumstances beyond her control, which contributed to her inability to pay her debts, i.e., she is a single mother with little or no financial support, and her four-month period of unemployment. 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. The evidence shows Applicant was unemployed for a relatively brief period. Notwithstanding, she has more than doubled her income from 2004 (\$38,000) to 2010 (\$94,000). She has been consistently employed and earning at least \$74,000 a year since February 2007. Despite her earnings, Applicant presented little documentary evidence of paid debts or of any efforts to resolve her debts.

In light of her negative monthly net remainder, and her failure to pay relatively small debts, I find she is financially overextended. She is not in control of her

financial situation, and her financial problems are likely to continue. Considering the record as a whole, 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.

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 November 2008 security clearance application when she failed to disclose the debts and judgments alleged in the SOR. Considering the record evidence as a whole, including her education, her years working for government contractors, the Government's expressed concerns during her 2003 background investigation, and her demeanor and 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 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. 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.

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.

³ See 18 U.S.C. 1001.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a devoted mother and has been taking care of her son for many years with little financial assistance. She has worked for government contractors and has possessed a security clearance since 2004. 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 little documentary evidence of debt payments, contacts with creditors, negotiations to resolve her SOR debts, or of other efforts to resolve her debts. She also failed to resolve any of her relatively small delinquent obligations even though she has been aware of the Government's financial considerations concerns since 2003. Her favorable information fails to show financial responsibility and good judgment. Applicant does not fully understand 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.f:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-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 eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

JUAN J. RIVERA
Administrative Judge