



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 09-02975
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

February 3, 2010

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns pertaining to financial considerations. She has mitigated personal conduct concerns. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application, Standard Form (SF) 86, on April 23, 2007. The signature page attached to this SF-86 bears the date of March 28, 2007. On April 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F (financial considerations) and E (personal conduct) for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 26, 2009, and requested a hearing. Department Counsel was prepared to proceed on July 28, 2009, and I received the case assignment on July 30, 2009. DOHA issued a notice of hearing on August 21, 2009, scheduling the hearing for September 23, 2009. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 7, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through C, which were received without objection, and she testified on her own behalf. I held the record open until September 29, 2009, to afford the Applicant the opportunity to submit additional documents. Applicant subsequently submitted AE D through F, which were received without objection. DOHA received the hearing transcript (Tr.) on October 7, 2009.

Findings of Fact

Applicant admitted with explanations all of the SOR allegations except SOR ¶ 1.j., which she denied, and SOR ¶ 1.k., which she did not respond to. At the onset of her hearing, Applicant admitted SOR ¶ 1.k. Tr. 13-14. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 50-year-old prospective “networthiness specialist,” who seeks to reinstate her security clearance to qualify for employment with a defense contractor. Tr. 50-51. She successfully held a security clearance from approximately 1994 to 2009, a period of 15 years. She was initially granted a security clearance while on active duty in the U.S. Army, discussed *infra*. Tr. 17, 20-24.

Applicant graduated from high school in June 1977. Tr. 20. She was awarded a Bachelor of Science Degree in Management and Human Resources in January 1992. She attended another university from January 2002 to January 2004 and earned approximately 90 hours towards a degree in Human Relations, but did not graduate. Tr. 17-20. She served in the Army on active duty from March 1994 to March 1998, and was honorably discharged as a Specialist 4 (pay grade E-4), with a Military Occupational Specialty of 31R (Mobile Subscriber Equipment Operator). Tr. 24-26.

Applicant was previously married three times. Her most recent marriage was from January 1998 to May 2006. She could not recall the dates of her two previous marriages at her hearing. All marriages ended by divorce. Applicant has no dependents. Tr. 26-27, GE 1.

Financial Considerations

Applicant’s background investigation addressed her financial history and current situation. It included the review of her April 2007 SF-86; her April 2007, May

2008, November 2008, July 2009 credit reports; and her July 2008 Response to Interrogatories. GE 1 – 6.

Applicant's SOR identified 11 separate financial line items. Her SOR documents a history of financial difficulties that began as early as 1992 when she filed for Chapter 13 bankruptcy. (SOR ¶ 1.a.) Applicant testified her indebtedness at the time she filed bankruptcy was due to her "bad money management." Tr. 28. Applicant did not identify any potential financial considerations mitigating conditions under AG ¶ 20 at the time she filed bankruptcy in 1992, discussed *infra*. Tr. 28-30.

The remaining allegations consist of ten different debts, i.e., charged off credit card debt of \$9,088 (SOR ¶ 1.b.); charged off credit card of \$7,724 (SOR ¶ 1.c.); charged off credit card of \$3,749 (SOR ¶ 1.d.); credit card collection account of \$17,770 (SOR ¶ 1.e.); credit card collection account of \$5,615 (SOR ¶ 1.f.); credit card collection account of \$14,809 (SOR ¶ 1.g.); credit card collection account of \$6,824 (SOR ¶ 1.h.); credit card collection account of \$9,300 (SOR ¶ 1.i.); collection account of \$6,038 (SOR ¶ 1.j.); and cell phone collection account of \$48 (SOR ¶ 1.k.) The total indebtedness alleged against Applicant is \$80,965.

Applicant was unable to state with any degree of certainty whether the debts alleged were the original creditor(s) or which debts had been purchased or transferred to a credit collection company. She did not provide any documentation clarifying the debt status with the possible exception of two payments discussed *infra*. The majority of these debts became delinquent in the approximate time-frame of 2003. Tr. 30-38, 53-56. When queried about the nature of these debts, she responded they were for "[e]verything except living expenses." Tr. 31, 32, 35. Applicant testified in 2003 she was stationed with her ex-husband in Germany and was underemployed at the Post Exchange as a sales associate from January 2003 to May 2005. All debts alleged belong to Applicant. Tr. 33, 44-45, 53-54, GE 1, p. 3. Applicant testified she worked at the Post Exchange "maybe 30" hours a week and "was probably making \$10 an hour." Tr. 44.

After returning from Germany, Applicant's SF-86 reflects that she was unemployed from May 2005 to August 2005; that she was employed as an account manager from August 2005 to March 2006; that she was unemployed from April 2006 to November 2006, that she was employed as a retail sales associate from November 2006 to March 2007, and that she was employed as a business analyst for a defense contractor beginning in March 2007. She quit her job as a retail sales associate to start her job with a defense contractor in March 2007, and was laid off from her defense contractor job in February 2009. Tr. 45, 51, GE 1.

In her Response to Interrogatories, Applicant indicated that she "spoke to a budget analyst" on Post at some point in 2007, but did not offer evidence that she had participated in or completed financial counseling. GE 4. In any event, there is no evidence her financial problems are resolved or under control.

Applicant did offer some evidence that she paid \$25 in September 2009 towards one of the credit collection companies, most likely one of the debts alleged in SOR ¶¶ 1.e. and 1.f., but was unable to establish which debt the payment applied to. Tr. 37-41, AE A. Applicant testified she paid by debit card the \$48 debt alleged in SOR ¶ 1.k. Applicant submitted two letters dated September 21, 2009 to two different creditors in which she purports to have sent \$25 towards paying down her debts. Again, she is unable to identify with any degree of certainty which of the alleged debts these payments apply to. Tr. 39-42, AE B, AE C.

Applicant's June 2008 Personal Financial Statement (PFS) reflected that she had \$35,000 in savings and a net monthly remainder of \$820. At the time, she was working as a defense contractor. Since being laid off, she has been drawing unemployment and her September 2009 PFS reflects \$9,000 in savings and a net monthly remainder of negative \$465. Tr. 48-49, AE F.

Applicant described her plan to achieve financial responsibility:

My plan is to talk to CCCS and see if they can help me. The conundrum is I can't afford to set up a plan that's going to cost me \$500 a month unless I have the security clearance and a job. And it sounds like you're not going to give me a security clearance so I can get a job unless I'm doing that. Tr. 57.

Personal Conduct

Applicant answered "No" to questions 28.a. and 28.b. on her April 23, 2007 SF-86 (asking whether in last seven years she had been over 180 days delinquent on any debts); and (asking whether she was currently over 90 days delinquents on any debts), respectively. She did not list any debts on this SF-86. GE 1. (SOR ¶¶ 2.a., 2.b.)

Applicant testified that she answered "Yes" to questions 28.a and 28.b when completing her original March 2007 SF-86. Referring to the time she completed her SF-86, she stated, ". . . I am definitely 180 days delinquent and if I'm 180 days delinquent it seems to me that yes that means I'm definitely 90 degree – 90 days." Tr. 64.

Post-hearing, Applicant submitted what she purported to be her original SF-86, which was dated March 27, 2007. On that SF-86, she did, indeed, check "Yes" to questions 28.a and 28.b. Tr. 63-64, AE E. I accept this document as authentic and unaltered.

Recommendations

Applicant did not submit any character or reference letters nor did she submit any work-related references.

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 an applicant 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 overarching adjudicative goal is a fair, impartial, and commonsense 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

Guideline F, Financial Considerations

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, her answers to DOHA interrogatories, her SOR response, and statement at her hearing. The government established through Applicant’s admissions and evidence presented the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a) through 20(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.

Considering the record evidence as a whole,¹ I am only able to give Applicant partial credit under AG ¶¶ 20(b) and 20(d) and conclude that none of the remaining mitigating conditions apply. Applicant was divorced in May 2006. Applicant submitted evidence of at least three periods of unemployment, i.e., May 2005 to August 2005, April 2006 to November 2006, and February 2009 to present. However, the majority of her debts became delinquent in 2003 when she was employed and married to her former husband. Applicant is unable to demonstrate her current financial situation is sufficiently attributable to those events. In September 2009, Applicant submitted some evidence of modest payments and attempts to contact her creditors. The majority of her debts remained unaddressed for six years until recently when the government identified them as a security concern. In short, her recent efforts can best be described as too little, too late. As noted, Applicant was unable to identify with any degree of certainty which of the alleged debts these payments apply to. To conclude, Applicant's sparse favorable information fails to raise full applicability of any of the mitigating conditions.

Based on the available evidence, her financial problems are recent, not isolated, and it is unclear whether they will be a concern in the future. Applicant has not carried her burden of proving her financial responsibility. Her overall financial behavior casts doubt on her current reliability, trustworthiness, and good judgment.

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.

¹ See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case in regard to the allegation Applicant provided a false security clearance application:

- (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.

In April 2007, Applicant submitted an SF-86 that asked questions about past and current indebtedness, noted *supra*. Applicant was able to clear up discrepancies pertaining to alleged falsifications by submission of her original SF-86 post-hearing.

AG ¶ 17 provides seven conditions that could mitigate personal conduct 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.

Applicant credibly stated when she completed her SF-86 that she checked the blocks "Yes" to questions 28.a. and 28.b. regarding past indebtedness. Post-hearing she submitted her original SF-86 dated April 27, 2007, which corroborated her testimony.

She was candid and forthright at her hearing about her past indebtedness. I conclude Applicant's alleged falsifications were not intentional and AG ¶ 17(f) fully applies. The falsification allegations are not substantiated. I am satisfied she did not deliberately and intentionally fail to disclose her past indebtedness during the security clearance application process with the intent to deceive.²

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,

²The 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)).

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.

The comments under Financial Considerations and Personal Conduct in the Analysis section, *supra*, are incorporated in the Whole Person Concept. Applicant's lack of financial responsibility spanned a minimum of six years from 2003 to 2009. With the exception of one small debt, the remainder of her debts remain unaddressed or their status remains uncertain. Concerns over Applicant's alleged falsification of her SF-86 were mitigated by submission of post-hearing documentation.

Applicant receives substantial credit for her four years of active duty and subsequent work in the defense contractor industry. She successfully held a security clearance for approximately 15 years. Aside from the SOR allegations, no other disciplinary or security-related problems surfaced. Her record of military service and employment weighs in her favor. There is a definite dichotomy between how Applicant handled her financial affairs and her work-related performance. I am convinced that she is loyal to her country.

Although Applicant was able to mitigate falsification concerns, she was unable to mitigate financial considerations concerns. Given her current situation of being unemployed and her significant unresolved debt, it is unlikely she will be able to attain financial responsibility in the near future. It is unfortunate that she allowed her debts to accumulate and more unfortunate that she was unable or unwilling to address her debts when she was in a position to do so. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude she has mitigated personal conduct concerns, but has not mitigated financial considerations 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
Subparagraphs 1.a. – 1.j.:	Against Applicant
Subparagraph 1.k.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a. to 2.b.:	For 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 eligibility for a security clearance for Applicant. Clearance is denied.

Robert J. Tuidor
Administrative Judge