



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



In the matter of:)
)
) ISCR Case No. 09-05153
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

March 21, 2011

Decision

HENRY, Mary E., Administrative Judge:

After a review of the evidence in the record, Applicant has not mitigated the security concerns of the Government. Her eligibility for access to classified information is denied.

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on March 13, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on August 13, 2010, detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, that provided the basis for its preliminary decision to deny her a security clearance. 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 For Determining Eligibility for Access to Classified Information (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on August 23, 2010. She submitted a notarized, written response to the SOR allegations under Guideline F, dated September 22, 2010, and requested a decision on the written record in lieu of a hearing. DOHA resent the SOR and cover letter on October 5, 2010, requesting Applicant to answer all the allegations. Applicant received this letter on October 26, 2010. She submitted a second notarized, written response to the all the SOR allegations dated November 16, 2010.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on December 21, 2010. Applicant received the FORM on January 10, 2011. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted an undated response, which DOHA received on March 8, 2011. DOHA assigned this case to me on February 24, 2011. The Government submitted 13 exhibits, which have been marked as Items 1-13 and admitted into the record. Applicant's responses to the SOR have been marked and admitted as Items 2 and 4, and the SOR has been marked as Item 1. Her response to the FORM has been marked AE A.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.nn and 2.a-2.e of the SOR. Her admissions are incorporated herein as findings of fact. Her admission to the allegations in ¶¶ 2.a-2.d contain the explanation that she did not review her credit report before completing her e-QIP. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 33 years old, works as an analyst for a Department of Defense contractor. She has worked for her current employer since August 2008.¹

Applicant married in 2001 and divorced in 2007. She has two children, ages 9 and 7. She graduated from high school and earned an Associate of Arts degree in 2005. She provides the financial support for her children.²

Applicant's financial problems arose during her marriage. She and her husband spent money recklessly and did not pay their bills, causing her to experience difficulties with paying her day-to-day expenses. Family members helped her with her living expenses. Her former husband is not taking responsibility for any of their past bills.³

The SOR identified 40 purportedly continuing delinquencies as reflected by credit reports from 2008, 2009, and 2010 for more than \$110,000. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts

¹Item 6.

²*Id.*

³Item 7.

are referenced repeatedly in both credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agency name or under a different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.

In December 2008, Applicant contacted a credit services company to help her resolve her debt problems. As of March 31, 2009, nine debts had been removed from Applicant's credit report through this company. None of these debts appear to be listed as unpaid debts in the SOR. There is no evidence that she developed a payment plan with this company.⁴

In October 2009, Applicant contacted a second credit counseling company for assistance in resolving her debts. The company documentation showed a monthly net income of \$4,284 and monthly expenses of \$2,800, leaving \$1,484 a month for payment of her debts. This company listed debts totaling \$61,000 and suggested a monthly payment plan of \$1,300. Applicant provided no documentation that she actually signed a contract with this company, and she did not submit documentation which showed she has been making monthly payments to this company. In her response to interrogatories, she indicated that some of her debts would be resolved with this company.⁵

Applicant contacted a third credit counseling company in November 2009, and signed an agreement with this company on November 13, 2009. The financial statement with this company showed a net monthly income of \$2,750 and monthly expenses of \$2,095, leaving approximately \$655 for debt payment. This company listed \$28,200 in debts and a service fee of approximately \$8,000. From the documentation, her monthly payment for debt resolution would be \$600. Applicant indicated in her response to interrogatories that certain debts would be paid by this company. She has not provided any documentation which showed that she agreed to a specific monthly payment and that she complied with her payment plan or paid any debts.⁶

In her response to the FORM, Applicant indicated that she filed for bankruptcy, but she did not provide a copy of her bankruptcy petition or advise on the status of her petition. She also indicated that she consolidated her student loans and that she is making payments on these loans. She again did not provide any documentation which showed her payments. She has not provided a budget or a copy of her monthly earnings statement.⁷

When she completed her e-QIP, Applicant listed a foreclosure and a voluntary car repossession. Concerning her failure to acknowledge her remaining debts, Applicant

⁴Item 8.

⁵*Id.*

⁶*Id.*

⁷AE A.

indicated in her response to the SOR and the FORM that she did not have her credit report to review at the time she completed her e-QIP, but did not deny that she intentionally failed to provide this information. In her interview with the investigator, she acknowledged that she intentionally failed to provide this information, as she was afraid her debts would jeopardize her ability to get a security clearance. She apologized for not disclosing all her credit information in her response to the FORM.⁸

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.

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.

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. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally

⁸Item 4; Item 7; AE A.

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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and especially the following:

- (a) inability or unwillingness to satisfy debts.

- (c) a history of not meeting financial obligations.

Appellant developed significant financial problems while married to her husband. They lived beyond their financial means, spent money to excess, and failed to pay their bills. The debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and especially 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.

Applicant contacted three credit counseling companies to help resolve her debts. She, however, has not provided documentation showing that she hired two of the companies and complied with the established payment plans. She signed an agreement with a third company, but she has also not shown that she complied with an agreed upon payment plan. She has not demonstrated through reliable evidence that she has paid any of the debts in the SOR. Thus, her debts remain unpaid. Due to the lack of information in the record, Applicant has not mitigated the Government's security concerns.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16(a) describes a condition that could raise a security concern and may be disqualifying:

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.

For AG ¶ 16(a) to apply, Applicant's omission, concealment or falsification of relevant facts must be deliberate. Proof of a omission, standing alone, does not establish that it is deliberate. See ISCR Case No. 07-00196 (App. Bd. Feb. 20, 2009); ISCR Case No. 09-07551 (App. Bd. Mar. 1, 2011) In evaluating whether the Government has presented substantial evidence regarding the deliberate nature of a false statement or an omission, the Judge must examine the statement or omission in light of the record as a whole. *Id.* In making this determination, the administrative judge must determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.

Applicant admitted that she deliberately failed to list her debt problems because she was afraid her debts would impact her security clearance. The Government has established intentional falsification.

I have reviewed all the mitigating conditions and find that none 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 an applicant's conduct and all 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.

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 decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems began after she married. She and her former husband spent money and lived beyond their income. She divorced him and stopped living beyond her income. She pays her basic living expenses and the costs of raising her two children. Her documentation indicated two different levels of monthly income and expenses. This difference is not explained. Both income and expense statements show that she has money to repay some of her debts, but she has not provided documents to show any payments on her debts. She contacted three credit counseling companies over a one-year period, but has not shown that she has agreed to their payment plans and made the required payments. The current record shows significant debt without any resolution. Not only does her high level of debts raises a security concern, her intentional falsification of her SF-86 (e-QIP) is a security concern.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her finances and personal conduct under Guidelines F and E.

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.n	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-2.e:	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.

MARY E. HENRY
Administrative Judge