



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



In the matter of:)	
)	
)	ISCR Case No. 09-07754
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Marc G. Laverdiere, Esq., Department Counsel
 Richard Stevens, Esq., Department Counsel
 For Applicant: *Pro se*

October 19, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

On May 27, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and J. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

In an undated answer to the SOR, Applicant requested a hearing before an administrative judge. The case was assigned to me on August 11, 2010. DOHA issued a Notice of Hearing on August 12, 2010. I convened the hearing as scheduled on

September 8, 2010. The Government offered Exhibits (GE) 1 through 6. Applicant did not object and they were admitted. Applicant and two witnesses testified. Applicant offered Exhibits (AE) A through F, which were admitted without objections. The record remained open until September 22, 2010, to allow Applicant an opportunity to provide additional documents, which she did. They were marked as AE G through J. Department Counsel had no objections and they were admitted.¹ DOHA received the hearing transcript (Tr.) on September 15, 2010.

Procedural Issues

Department Counsel moved to amend the SOR by deleting from ¶ 2.a, the word “trespass.” Applicant had no objection and the motion was granted.

Findings of Fact

Applicant denied all of the allegations in the SOR except ¶ 2.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 34 years old. She married in 1994 and separated from her husband in 1999. She is estranged from him and intends to seek a divorce. She has a 15-year-old daughter. She does not receive child support. Applicant is a high school graduate. She completed some college classes, but does not have a degree. She has worked for her present employer, a federal contractor, since May 2010. Before then, she worked for different federal contractors. She has held a Top Secret security clearance for approximately nine years.²

In July 2005, Applicant was involved in an altercation in her home. A person who was visiting her roommate refused to leave the house. There was a mutual fray that involved pushing and shoving. Applicant was attempting to forcibly remove the person from her house. She believed the other person was intoxicated and she was acting in self defense. Both Applicant and the person filed assault charges against each other. At a later time, they both agreed to withdraw their complaints. Applicant had an interim Peace Order issued against her as a result of the charge.³

In July 2008, Applicant was arrested and charged with assault-first degree, reckless endangerment, and assault second degree. An argument ensued between Applicant, a person she had a relationship with, and a third person. The argument escalated into a fight and involved shoving and pushing. One of the people pressed charges. Applicant stated she did not know if the person who pressed charges sustained any injuries. Applicant pled guilty to reckless endangerment, a misdemeanor,

¹ Department Counsel’s Memorandum was marked Hearing Exhibit I.

² Tr. 52-53, 64-65, 70-72.

³ Tr. 18-19, 43-44; 72-73; GE 6; AE A.

and the other charges were nolle prosequi. She was sentenced to five days in jail, a fine of \$207, and three years unsupervised probation before judgment. Applicant served the jail time and paid the fine. She remains on unsupervised probation until May 2012.⁴

Applicant reported the above incidents to her security manager in a timely manner. She was terminated from her job based on the July 2008 arrest. When she lost her job, it affected her ability to pay her bills. Before then, she had been paying her bills on time. She obtained another job in August 2008 and was employed until February 2010, but this job did not pay as much as she had been earning previously. She was unemployed from March 2010 to April 2010. Applicant used her credit cards to help pay her living expenses. She had difficulty paying them and subsequently defaulted on some debts. She also withdrew money from her 401(k) pension plan to pay expenses.⁵

The debt in SOR ¶ 1.a is a credit card debt (\$3,377) that was charged off. She had been making \$100 monthly payments toward the debt. She stated she negotiated a settlement agreement with the creditor to make three payments of \$647 for three months. The agreement is not yet in writing, and she has not begun the payments. She provided proof that she made five payments of \$100 beginning in April 2010 and her last one was made on August 26, 2010.⁶

The debt in SOR ¶ 1.b is a credit card debt (\$6,283) that was charged off. Applicant stated she attempted to get the creditor to lower the interest rate and reduce the payment amount, but was unsuccessful. The debt has been sold to a collection company, and she is having difficulty determining what company holds the debt. The debt is not paid.⁷

The debt in SOR ¶ 1.c is a credit card debt (\$9,264) that was charged off. Applicant could not negotiate a settlement with the creditor. She stated she has not been contacted by a collection company and has not contacted the creditor recently. The debt is unpaid.⁸

The debt in SOR ¶ 1.d is a telephone bill debt (\$330) that was charged off. Applicant settled and paid the debt in the amount of \$297 in approximately April 2010.⁹

The debts in SOR ¶¶ 1.e and 1.f are student loans (\$4,514 and \$4,291) that were charged off. The debts are now with a collection company. In her answer to the SOR,

⁴ Tr. 19-20, 30, 45-48, 50-60; 74; GE 3, 6; AE B.

⁵ Tr. 20; 27-29 AE C, D.

⁶ Tr. 31, 36-40, 52-60; AE F, H.

⁷ Tr. 30-31, 35, 61-62.

⁸ Tr. 40-41, 62-63.

⁹ Tr. 44-45; Answer to SOR.

Applicant stated that the two debts were combined and settled for \$3,500. She was required to make three payments of \$1,166.67 for three months. She stated the last payment was to be August 15, 2010. She provided proof that she made the three payments to satisfy the settlement agreement.¹⁰

Applicant stopped paying the mortgage on her house in January 2010. She stated the mortgage company permitted her to sell the house by “short sale.” The house has not been sold yet. She stated she was “negotiating a deed in lieu of foreclosure.” She moved from the house in August 2010. Her mortgage payments were \$1,650. She used the money that would have paid her mortgage to pay other bills. She lives with her brother now and pays \$750 for rent.¹¹

Applicant filed her 2009 tax return and received a refund. She stated she later received a letter from the Internal Revenue Service advising her she owed additional taxes. She believes this may be from when she withdrew funds from her 401(k) pension plan. She believes she owes around \$1,500. She has not resolved this issue.¹²

A witness who has known Applicant for 12 years testified on her behalf. She considers Applicant a trusted and dependable friend. She is reliable and always willing to help her when in need. She has never observed Applicant in a fight.¹³

A second witness testified on behalf of Applicant. She has known her for 12 years and about nine years ago they were coworkers. She believes Applicant to be a loving, caring, and responsible person. She is always on time for work and her character is beyond reproach. She is not violent and does not abuse drugs.¹⁴

I considered a character letter provided by Applicant from a coworker. He worked with her from 2001 to 2007. He believes she has displayed a great work ethic, professionalism, and has been an asset to their employer. She is considered a supportive and trustworthy friend. He believes her to be an outstanding person and citizen.¹⁵

¹⁰ Tr. 31-35, 40; 66-70, 76; AE H.

¹¹ Tr. 94-98.

¹² Tr. 99-102. I have not considered debts that were not alleged for disqualifying purposes, but I have considered them when analyzing the mitigating conditions, the “whole person,” and her complete financial situation.

¹³ Tr. 79-82.

¹⁴ Tr. 83-93.

¹⁵ AE J.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Criminal Conduct

AG ¶ 30 sets out the security concern relating to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 30 and especially considered:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and
- (d) individual is currently on parole or probation.

Applicant was arrested and charged with assault in 2005. The charge was later withdrawn. She was arrested again in July 2008 and charged with first-degree assault, reckless endangerment, and assault-second degree. She pled guilty to reckless endangerment and the other charges were nolle prosequi. She served five days in jail, paid a fine, and remains on unsupervised probation until May 2012. I find all of the above disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and especially considered the following:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (c) evidence that the person did not commit the offense; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant denied she was involved in an assault in 2005 and the charge was later dismissed. She was involved in a criminal incident in 2008. She remains on probation for the 2008 criminal conviction. Applicant is remorseful for her criminal conduct. It has been over two years since the last incident and it appears she is attempting to put her

life back on the right track. However, Applicant's probationary period does not end until May 2012, which indicates she needs additional time to prove she will not have a recurrence of criminal activity. I find AG ¶ 32(a) does not apply because it is too early to conclude her conduct will not recur. I find AG ¶ 32(c) applies to the criminal conduct alleged in 2005. The charge was withdrawn and Applicant believed she was acting in self defense. I find AG ¶ 32(d) partially applies because Applicant is remorseful about her past conduct and it appears she has a good employment record.

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

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

Applicant has delinquent debts that are unpaid and unresolved. I find there is sufficient evidence to raise these disqualifying conditions.

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

- (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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has three delinquent debts, totaling approximately \$18,747, that she owes. She was delinquent in paying other bills that she recently negotiated settlements to resolve. AG ¶ 20(a) does not apply because Applicant still has delinquent debts that are unpaid. Applicant found herself in financial difficulty after she was convicted of reckless endangerment and lost her job. The financial problems were caused by her actions and I find AG ¶ 20(b) does not apply. There is no evidence Applicant received financial counseling. She has resolved some of her delinquent debts, but has others that remain unpaid and unresolved. I find AG ¶ 20(c) does not apply because Applicant's financial problems are not yet under control. In addition to the debts alleged in the SOR, Applicant owes the IRS and has not paid her mortgage since January 2010. It is unclear how her delinquent mortgage will impact her finances. AG ¶ 20(d) only partially applies because, although she has settled some of her delinquent debts, others remain unresolved.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In 2008, Applicant was convicted of reckless endangerment. She remains on probation for this offense until May 2012. She experienced financial problems when she lost her job due to her criminal conduct. She is remorseful for her actions. She has made recent attempts to resolve some of her

delinquent debts, but she has three large ones that remain. In addition, she owes the IRS and she moved out of her house after failing to pay the mortgage since January 2010. Until Applicant completes her probation and resolves her remaining delinquencies and financial problems, it is too early to conclude that she has mitigated the security concerns. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guidelines for Financial Considerations and Criminal Conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge