



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



In the matter of:)
(Redacted)) ISCR Case No. 10-00553
Applicant for Security Clearance)

Appearances

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

January 13, 2011

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her security clearance application (SCA) on July 16, 2009. On May 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guidelines F and E. DOHA acted 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on May 25, 2010, but her answer was incomplete. She submitted a complete answer on July 1, 2010, and requested a determination on

the record without a hearing. DOHA received her request on July 19, 2010. Department Counsel submitted the government's written case on October 15, 2010. On October 18, 2010, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the government's evidence. She received the FORM on October 25, 2010, and did not respond. The case was assigned to me on December 23, 2010.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.b-1.e, 1.h, and 2.a-2.c. Her admissions are incorporated in my findings of fact.

Applicant is a 28-year-old employee of a defense contractor, working as an administrative clerk since July 2009. She is a high school graduate. She has never held a security clearance.

Applicant's SCA reflects that she was employed as a bartender and food server from May 2006 until she submitted her SCA (GX 6 at 16.) However, she told a security investigator that she was unemployed from April 2006 to May 2007. She told the investigator she did not intend to conceal her unemployment but had difficulty entering the data electronically, because the computer program would not allow her to leave any gaps in her employment record. (GX 9 at 5.)

When Applicant submitted her SCA, she answered "Yes" to question 13C, asking if in the last seven years she had been fired, quit a job after being told she would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, left a job for other reasons under unfavorable circumstances, or was laid off from a job. She disclosed that she was laid off from a job for being too slow. She did not disclose that she left a job in June 2005 under unfavorable conditions and was fired from a job in April 2006, as alleged in SOR ¶¶ 2.b and 2.c. She admitted SOR ¶¶ 2.b and 2.c in her answer to the SOR and during an interview with a security investigator in October 2009. She also admitted to the security investigator that she should have disclosed the two unfavorable terminations and had no reason for not doing so. Nevertheless, she claimed she was not attempting to conceal the information. Regarding her being fired in April 2006, she told the investigator that she did not like the job, found it boring, and her dislike for the job showed in her performance. (GX 9 at 6.)

Applicant answered "No" to question 22b on her SCA, asking if in the last seven years, she had been arrested. She did not disclose that she was arrested in May 2005 for being an accessory to a crime. She pleaded guilty to disturbing the peace, and was fined and placed on probation for two years. Her arrest was alleged in SOR ¶ 2.a, and she admitted it in her answer and during an interview with a security investigator in October 2009. She also admitted to the investigator that she should have disclosed her arrest on her SCA. She claimed she disclosed it on other paperwork and did not intend

to conceal it, because she knew that police records would be checked as part of her background investigation. (GX 8 at 2; GX 9 at 6-7.)

Finally, Applicant answered “No” to question 26 on her SCA, asking if in the last seven years she had a judgment entered against her. She did not disclose a judgment entered against her in July 2006 and alleged in SOR ¶ 1.a. She told a security investigator that the debt was for unpaid rent, that the debt had been paid, and that her landlady had told her that she had filed a lawsuit for unpaid rent but that it would be withdrawn. (GX 9 at 8-9.) Applicant did not submit any documentation showing that the rent had been paid or the lawsuit withdrawn.

The SOR alleges nine delinquent debts totaling about \$17,000. The table below summarizes the evidence concerning these debts.

SOR	Debt	Amount	Answer	Status	Evidence
1.a	Judgment (rent)	\$2,248	Deny	Applicant claims it is paid; no documentation	GX 9 at 8-9; GX 12
1.b	Auto loan	\$1,535	Admit	Applicant claims it was stolen; no documentation	GX 13 at 1
1.c	Auto loan	\$1,025	Admit	Applicant claims it was stolen; no documentation	GX 13 at 1
1.d	Cable service	\$34	Admit	Paid	GX 13 at 1
1.e	Credit card	\$368	Admit	Unpaid	GX 9 at 9; GX 13 at 1
1.f	Auto loan	\$2,838	Deny	Applicant claims debt was settled in mediation; no documentation	GX 9 at 9; GX 13 at 2
1.g	Collection	\$2,327	Deny	Applicant has no information; has not disputed debt	GX 9 at 9; GX 13 at 2
1.h	Collection	\$237	Admit	Applicant claims it is paid; no documentation	GX 9 at 9;
1.i	Overpaid unemployment benefits	\$7,278	Admit	Applicant claims she made payment; no documentation	GX 9 at 7-8

Applicant’s net monthly income is about \$1,993, and her living expenses are about \$1,593, leaving a net remainder of about \$400. Her expenses do not include payments on any of the delinquent debts listed above. She has no savings. She told a security investigator that she has no money left at the end of the month. (GX 9 at 8.)

Policies

“[N]o 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 applicants 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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). “[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

The concern under this guideline 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.

Applicant admitted six of the nine delinquent debts alleged, and her admissions are corroborated by the Government's evidence. She denied two debts, claiming they were resolved, but she submitted no documentation to support her denial or to refute the Government's evidence. She denied one claim based on lack of information, but she has done nothing to investigate or challenge the debt. The evidence establishes two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

Since the Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and (c), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns based on financial problems can be mitigated by showing that "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." AG ¶ 20(a). This mitigating condition is not established because Applicant's delinquent debts are ongoing, numerous, and were not incurred under circumstances making them unlikely to recur.

Security concerns under this guideline also can be mitigated by showing that "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." AG ¶ 20(b). Both prongs, i.e., conditions beyond the person's control and responsible conduct, must be established. Applicant's unemployment from April 2006 to May 2007 was not a condition beyond her control, because she was fired for poor performance. She admitted to a security investigator that she did not like the job, found it boring, and her attitude was reflected in her performance. She did not present evidence of any other conditions beyond her control.

Security concerns under this guideline also can be mitigated by showing that “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.” AG ¶ 20(c). This mitigating condition is not established because Applicant presented no evidence that she has sought or obtained counseling, and her financial problems are not being resolved.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Although Applicant has a net monthly remainder of about \$400, she does not have a plan to resolve her delinquent debts, and she has not presented evidence of any payments, except for the \$34 cable bill, which she has paid. I conclude that AG ¶ 20(d) is established for the cable bill, but not for the remaining delinquent debts.

Security concerns under this guideline also can be mitigated by showing “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.” AG ¶ 20(e). Applicant claimed that several debts had been resolved, but she produced no evidence to support her claims. She claimed to have no information about the debt alleged in SOR ¶ 1.g, but she has done nothing to investigate, challenge, or dispute the debt. I conclude that AG ¶ 20(e) is not established.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15 as follows:

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 admitted being arrested in May 2005 for being an accessory to a crime and pleading guilty to disturbing the peace, as alleged in SOR ¶ 2.a. She admitted being terminated from employment under unfavorable conditions in June 2005 and April 2006, as alleged in SOR ¶¶ 2.b and 2.c. She has denied intentionally falsifying her SCA, as alleged in SOR ¶¶ 2.d-2.f.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an

applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

Applicant admitted to a security investigator that she should have disclosed her employment record and her police record, and she presented no reason for not disclosing them. She offered a facially plausible explanation for not disclosing the judgment for unpaid rent, but she failed to support her explanation with any documentation that the debt was paid or the lawsuit dismissed. Her intentional omissions from her SCA establish the disqualifying condition in AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire.

Applicant's unfavorable employment record and arrest record (which was not alleged under Guideline J, Criminal Conduct) establish the following disqualifying conditions:

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . a pattern of dishonesty or rule violations; 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 . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Security concerns raised by false or misleading answers on a security clearance application may be mitigated by showing that "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶ 17(a). This mitigating condition is not established because Applicant made no effort to correct the omissions from her SCA until she was confronted with the evidence ten months later.

Security concerns based on personal conduct may be mitigated by showing that "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." AG ¶ 17(c). The circumstances of Applicant's arrest and her terminations from employment under unfavorable conditions are arguably "minor," and they occurred several years ago. On the other hand, her falsifications are recent, serious, and did not occur under unusual circumstances. I conclude that AG ¶ 17(c) is established for the arrest and the

employment terminations alleged in SOR ¶¶ 2.a-2.c, but not for her falsifications alleged in SOR ¶¶ 2.d-2.f.

Security concerns based on personal conduct may be mitigated if “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.” AG ¶ 17(e). This mitigating condition is established by Applicant’s belated full disclosure of her arrest and employment record.

Whole-Person Concept

Under the whole-person concept, an 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. An 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 have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is relatively young and inexperienced. She did not request a hearing, limiting my ability to assess her sincerity and credibility. Her admitted lack of candor and her inattention to her financial affairs raise doubts about her reliability, trustworthiness and good judgment.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations and personal conduct. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1-a-1-c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.i:	Against Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraphs 2.a-2.c:	For Applicant
Subparagraphs 2.d-2.f:	Against Applicant

Conclusion

I conclude that 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.

LeRoy F. Foreman
Administrative Judge