



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 10-01679
)
 Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

January 12, 2012

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant was granted a security clearance on August 3, 2006. On June 22, 2011, the Defense Office of Hearings and Appeals (DOHA) notified Applicant of its preliminary determination that it was not clearly consistent with the national interest to continue her eligibility for access to classified information. DOHA set forth the basis for its preliminary decision in a Statement of Reasons (SOR), citing security concerns under Guidelines H, 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 received the SOR on July 12, 2011; answered it in an undated document; and requested a determination on the record without a hearing. Department Counsel amended the statement of reasons on October 6, 2011, adding two allegations under Guideline F. The amendment was returned as undeliverable, because it apparently was incorrectly addressed. Department Counsel submitted the government's written case on October 20, 2011. On October 21, 2011, a complete copy of the file of relevant material (FORM), consisting of 14 items, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the government's evidence. The FORM included the amendment to the SOR, marked as Item 4. Applicant received the FORM on October 31, 2011 but did not respond. The case was assigned to me on January 3, 2012.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 2.a-2.c and denied the allegations in SOR ¶ 2.d and 3.a. She did not respond to the amendment to the SOR that added SOR ¶¶ 2.e. and 2.f. Her admissions in her answer to the SOR are incorporated in my findings of fact.

Applicant is a 41-year-old production support engineer employed by a defense contractor since April 2004. She received a bachelor's degree in electronic engineering in January 2003. (Item 5 at 1; Item 9 at 4.) She applied for a security clearance on May 17, 2004, and she received a final clearance on August 3, 2006. (Item 6.)

On June 16, 2009, Applicant's pay was garnished for delinquent student loans totaling about \$67,393. (Item 7.) She admitted the delinquent student loans during an interview with a security investigator on September 3, 2009. She told the investigator she intended to let the garnishment run until the balance was paid. (Item 9 at 4.) However, on September 22, 2009, she initiated a direct debit from her savings account of \$100 per week in payment of her student loans. (Item 9 at 52.) On March 10, 2011, she submitted a personal financial statement (PFS) reflecting net monthly income of \$4,367, expenses of \$2,110, debt payments of \$580 (including payments of \$400 per month on her student loans), and a monthly remainder of about \$1,677. (Item 9 at 20.) On March 11, 2011, a loan processor confirmed that a \$100 debit from her checking account would be initiated on that date. (Item 9 at 53.)

Applicant's credit report dated June 27, 2009, reflected two delinquent student loans totaling \$67,449. It also reflected two student loans transferred to the Government, four student loans being paid as agreed, and three student loans with payments deferred. (Item 8.)

The same credit report also reflected a delinquent automobile loan with an outstanding balance of \$7,831. It reflected that the delinquent automobile loan was disputed and resolved, with the consumer disagreeing. Applicant told a security investigator that she disputed the amount because she believed it did not credit her with the proceeds from the auction of her repossessed automobile. The date of last activity

on the auto loan was in June 2006, and it was charged off in December 2006. (Item 8; Item 9 at 5.)

Finally, this credit report reflected a \$100 medical bill referred for collection in April 2005. In September 2009, Applicant told a security investigator that she paid this medical bill. (Item 8; Item 9 at 6.)

Applicant's credit report dated June 15, 2011, reflects two student loans totaling \$46,096, each listed as a "closed or paid account" with a zero balance. No other student loans are reflected on this credit report. This credit report also reflects the two collection accounts alleged in SOR ¶¶ 2.a and 2.b. The delinquent automobile loan alleged in SOR ¶ 2.c and delinquent medical bill alleged in SOR ¶ 2.d do not appear on this credit report. (Item 10.)

Applicant told a security investigator that she had received general financial advice from member of her church who worked in the financial industry. She provided no documentary evidence of financial planning or advice. (Item 9 at 7.)

On January 18, 2011, Applicant testified positive for marijuana during a random drug test, and her employer reported the positive drug test to the Government on January 27, 2011. (Items 7 and 11.) Subsequent drug tests on February 23, 2011; March 16, 2011; and April 12, 2011, tested negative for amphetamines, cocaine, marijuana, opiates, and phencyclidine. (Items 12, 13, and 14.)

In response to DOHA interrogatories on March 10, 2011, Applicant disclosed that she used marijuana from 1988 to 1990 while in college. She stated she had no intention of using it again. She did not disclose that she tested positive for marijuana two months earlier. (Item 9 at 12.)

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, an administrative judge applies these guidelines 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 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).

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 H, Drug Involvement

The SOR alleges that Applicant tested positive for marijuana use on January 18, 2011, while holding a security clearance. This allegation is established by the drug test results, the documentary evidence of Appellant’s security clearance, and her admissions.

The concern under this guideline is set out in AG ¶ 24: “Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.” Guideline H encompasses “drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens).” AG ¶ 24(a)(1).

The evidence raises the following disqualifying conditions under this guideline:

AG ¶ 25(a): any drug abuse, defined in AG ¶ 24(b) as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction”;

AG ¶ 25(c): illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶ 25(g): any illegal drug use after being granted a security clearance.

Security concerns under this guideline may be mitigated if “the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.” AG ¶ 26(a). Applicant's drug involvement was recent. She has provided no evidence regarding the circumstances of her most recent marijuana ingestion. Her use of marijuana while holding a security clearance casts doubt on her current reliability, trustworthiness, and good judgment. I conclude that this mitigating condition is not established.

Security concerns also may be mitigated by “a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation.” AG ¶ 26(b). None of the elements of this mitigating condition are established by the evidence.

Security concerns also may be mitigated by “satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.” AG ¶ 26(d). There is no evidence that Applicant has sought or received treatment or obtained a prognosis.

Guideline F, Financial Considerations

The SOR alleges two unpaid collection accounts (SOR ¶¶ 2.a and 2.b), a charged off automobile loan (SOR ¶ 2.c), a delinquent medical bill (SOR ¶ 2.d), and

delinquent student loans (SOR ¶¶ 2.e and 2.f). 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's admissions, corroborated by June 2009 credit reports, establish SOR ¶¶ 2.a and 2.b. The record does not indicate why the delinquent automobile loan alleged in SOR ¶ 2.c was not reflected on her June 2011 credit report. She denied the \$100 medical debt alleged in SOR ¶ 2.d, and she told a security investigator she had paid it. It also is not reflected on her most recent credit report. Less than seven years have elapsed since the automobile loan was charged off and the medical bill was referred for collection, suggesting that something other than the passage of time caused these debts to be deleted from her credit record.¹ I conclude Applicant's admissions in her September 2009 interview with a security investigator and in her answer to the SOR are sufficient to establish the delinquent automobile loan in SOR ¶ 2.c. However, I conclude that Applicant's statement to the security investigator that she paid the medical bill alleged in SOR ¶ 2.d, her denial of that debt in her answer to the SOR, and the absence of that debt on her June 2011 credit report are sufficient to show that it was resolved.

The delinquent student loans alleged in SOR ¶¶ 2.e and 2.f are reflected in her June 2009 credit report. She admitted to a security investigator that they were delinquent, and her pay was garnished in June 2009 to collect them. Thus, I conclude that SOR ¶¶ 2.e and 2.f are established by substantial evidence. Taken together, the evidence of the delinquent debts alleged in SOR ¶¶ 2.a, 2.b, 2.c, 2.e, and 2.f is sufficient to establish two disqualifying conditions: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

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 for the debts alleged in SOR ¶¶ 2.a-2.d, because Applicant's delinquent debts were recent, numerous, and did not occur under circumstances making them unlikely to recur. However, it is established for the delinquent student loans alleged in SOR ¶¶ 2.e and 2.f because she is not likely to incur further student loans and the evidence indicates that they have been resolved. Although

¹ Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection or charged off that antedate the credit report by more than seven years. The exceptions to this prohibition do not apply to these debts. 10 U.S.C. § 1681c.

she told a security investigator in March 2009 that she intended to let the garnishment run its course, she initiated weekly \$100 payments shortly after that interview and reflected them on her PFS in March 2011. Her most recent credit report reflects no delinquent student loans, and the student loans reflected on that credit report are shown as paid in full.

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). This mitigating condition is not established, because there is no evidence of circumstances beyond Applicant’s 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 has two prongs that may be either disjunctive or conjunctive. If the person has received counseling, it must also be shown that there are clear indications the problem is being resolved or under control. However, if the person has not received counseling, this mitigating condition may still apply if there are clear indications that the problem is being resolved or under control. Applicant told a security investigator that she received general financial advice from members of her church, but there is no evidence that she received the kind of financial planning contemplated by this mitigating condition. The evidence reflects that her delinquent medical bill and student loans have been resolved, but her other delinquent debts are not resolved or under control. I conclude that this mitigating condition is not established for the delinquent debts alleged in SOR ¶¶ 2.a-2.c, but it is established for the delinquent debts alleged in SOR ¶¶ 2.d-2.f.

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). For the reasons set out in the above discussion of AG ¶¶ 20(a) and 20(c), I conclude that this mitigating condition is established for the delinquent debts alleged in SOR ¶¶ 2.d-2.f, but not for the delinquent debts alleged in SOR ¶¶ 2.a-2.c.

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 disputed the \$100 medical debt, and her most recent credit report reflects that it has been resolved. Applicant disputed the amount of the delinquent auto loan because she did not believe it reflects credit for the proceeds of the auction, but she presented no evidence to substantiate her belief. I conclude that this mitigating condition is

established for the delinquent medical bill alleged in SOR ¶ 2.d, but not for the other debts alleged in the SOR.

Guideline E, Personal Conduct

The SOR alleges that Applicant intentionally falsified her response to DOHA interrogatories in March 2011, when she stated that she last used marijuana in 1990, even though she tested positive for marijuana use in January 2011. After considering the positive urinalysis, Applicant's responses to the interrogatories, and the short time interval between the positive urinalysis and her response to the interrogatories, I conclude that SOR ¶ 3.a is established by substantial evidence. Applicant's intentional false statement in her response to interrogatories established the disqualifying condition in AG ¶ 16(b): "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative."

Security concerns raised by false or misleading answers during security clearance processing 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 there is no evidence that Applicant made any effort to correct her false statement.

Security concerns raised by personal conduct may be mitigated if "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). Applicant's falsification was not "minor" because it undermined the integrity of the security clearance process. It was recent and did not happen under unique circumstances. It was "infrequent" because there is no evidence of other falsifications, but it casts doubt on her current reliability, trustworthiness, and good judgment.

Whole-Person Concept

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. In applying 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 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.

I have incorporated my comments under Guidelines H, 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 a mature, well-educated adult. She has worked for a defense contractor for more than seven years and held security clearance for more than five years. She has made significant progress in resolving her financial situation. On the other hand, she has presented virtually no evidence to refute, explain, extenuate, or mitigate her recent drug use and her false response to DOHA interrogatories.

After weighing the disqualifying and mitigating conditions under Guidelines H, 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 her drug involvement, financial delinquencies, and lack of candor. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline H (Drug Involvement):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant
Subparagraphs 2.d-2.f:	For Applicant
Paragraph 3, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge