



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 10-02270 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

June 29, 2011

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I deny Applicant's eligibility for access to classified information.

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on October 20, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on September 1, 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 received the SOR, and she submitted her Responses on October 4, 2010, November 8, 2010, and December 27, 2010. The reason for three submissions of her Response is not explained. Applicant requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on March 2, 2011. I received the case assignment on March 4, 2011. DOHA issued a notice of hearing on March 15, 2011, and I convened the hearing as scheduled on April 7, 2011. The Government offered exhibits marked as GE 1 through GE 8, which were received and admitted into evidence without objection. Applicant testified. She submitted one exhibit marked as AE A, which was received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on April 13, 2011. I held the record open until April 22, 2011, for Applicant to submit additional matters. Applicant timely submitted AE B through AE E, without objection. The record closed on April 22, 2011.

Findings of Fact

In her Response to the SOR, Applicant admitted the factual allegations in the SOR. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Appellant, who is 38 years old, works as a security officer for a Department of Defense contractor. She began her current employment in July 2008. Applicant received her high school equivalency diploma through the General Education Development program, then attended a community college which awarded her an associate's degree.¹

Applicant married in 2001, after a 10-year relationship with her husband. They have five children, who are 21, 17, 14, 13, and 10. Four children reside with her and depend upon her for their support while they attend school. Her oldest child, a son, is currently incarcerated and not financially dependent upon her at this time. She and her husband separated in 2006 and divorced in 2007.²

Applicant's former husband is required by the courts to pay her \$1,023 a month in child support. Between May 2010 and April 2011, her former husband paid her \$6,407 of the \$12,276 he owed. He last paid her child support in February 2011 in the

¹Tr. 18, 36.

²GE 1; Tr. 16-18.

amount of \$509. According to the financial records submitted, Applicant's former husband owes her nearly \$11,000 in unpaid child support as of April 11, 2011.³

In August 2005, Applicant and her family moved 60 miles from their residence to avoid injury from a major natural disaster. As a result of this disaster, she and her family lost their home, car, and belongings. She also lost her job and did not return to work until April 2006. She then worked from April 2006 until November 2006, when she was again unemployed. She returned to work in October 2007 and has worked steadily since this date. Applicant had to rebuild her life after the natural disaster with no income or savings.⁴

Applicant currently earns \$15.93 an hour. For an 80-hour bi-weekly pay, her net monthly income totals approximately \$2,300. She also receives approximately \$550 a month in food stamps. Her regular monthly expenses of approximately \$2,700 include \$900 in rent, \$650 for food, \$580 for utilities and phones, \$250 for transportation,⁵ \$62 for insurance, and \$200 for miscellaneous expenses, such as personal care and clothing. She has about \$150 for unanticipated expenses and debt repayment.⁶

The SOR identified 13 purportedly continuing delinquencies as reflected by credit reports from 2009 and 2010, totaling approximately \$19,674. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts 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.

Applicant has not resolved or paid any of the debts listed in the SOR. In May 2010, she met with a consumer financial company to discuss consolidation of her debts into one payment. During her meeting with a company representative, the representative reviewed Applicant's expenses, which included a variety of ongoing and expected monthly expenses for Applicant and her children. Their budget reflected a \$540 deficit each month. After evaluating her monthly income and monthly expenses, the company first indicated that her monthly payment to resolve her debt would be

³AE D; Tr. 27.

⁴GE 1; Tr. 25-27.

⁵Applicant paid \$392 monthly on a car from January 2009 until June 2010 when she apparently stopped her payments. The company later repossessed her car. The loan has a remaining balance of \$4,000. This debt is not included in the SOR, nor are expenses related to a car listed on her most recent budget. AE A; AE B.

⁶GE 6; AE A; AE B; AE E.

\$511, then advised her that she did not qualify for its services because she did not earn enough money.⁷

Seven debts identified in the SOR relate to unpaid medical bills (SOR ¶¶ 1.b, 1.c, 1.e, 1.f, 1.g, 1.i, and 1.k) and total \$830. Because she had insurance when she or her children received the medical services and paid her co-payment at the time of service, she believed these bills had been paid in full by the insurance carrier. The November 7, 2009, June 23, 2010 and March 23, 2011 credit reports indicate that Applicant challenged the validity of the medical bill in SOR ¶ 1.e. Medical expenses are non-discretionary costs.⁸

Applicant's husband purchased a car, and she co-signed the loan during their marriage. (SOR ¶ 1.h) Her husband later defaulted on the loan. The amount of the debt owed, \$17,304, is the same amount as the initial balance on the loan. The balance does not reflect any payments on the debt or the amount received by the creditor after sale of the automobile. Thus, the actual balance of this debt is unknown.⁹

Immediately after the natural disaster, Applicant and her husband leased a car, which they eventually returned to the leasing company (SOR ¶ 1.a (\$1,128)). Some time later, the court awarded the company a judgment against her. She does not understand why she owed this company additional money on the car lease. When Applicant met with the security clearance investigator in December 2009, she denied any knowledge of the debts listed in SOR ¶¶ 1.j (\$353) and 1.l (\$680) as well as the judgment in SOR ¶ 1.a and two other accounts not listed in the SOR. She acknowledged owing the debts identified in SOR ¶¶ 1.d (\$379) and 1.m (\$1,000). She advised the investigator that she planned to consolidate her debts into one bill and pay her debts by the summer of 2010. Applicant does not use credit cards and does not have debts related to expenses beyond usual living costs.¹⁰

When she completed her e-QIP, Applicant answered "no" to the following questions:

Section 26: Financial Record

- m. Have you been over 180 days delinquent on any debt(s)?
- n. Are you currently over 90 days delinquent on any debt(s)?

⁷AE A; Tr. 23-24.

⁸Tr. 18-19.

⁹GE 3; GE 5; GE 7; GE 8.

¹⁰GE 5; Tr. 20-21, 25.

Applicant listed a paid judgment, including the account number and other specific information, in her e-QIP, but did not list any other debts. When she met with the security clearance investigator, she explained that her failure to do so was an oversight. At the hearing, she further explained that because she was in a hurry to complete the e-QIP, her debts were not on her mind nor was her credit report. She did not have time to retrieve her credit report.¹¹

In September 1999, Applicant and her sister-in-law stopped at a convenience store to purchase a few items. Applicant purchased and paid for her items. While she was in the bathroom, her sister-in-law stole some candy, which the police found in Applicant's car. The police arrested both. Applicant appeared in court in early 2000 and pled guilty. The court fined her and assessed her court costs, which she paid in full by 2006.¹²

In August 2000, Applicant and her former husband celebrated their birthdays. Afterward, they and her cousin stopped at a coffee shop in the early morning hours. While sitting inside with her cousin, she observed the police arresting her former husband. She walked outside and asked them why he was being arrested. The police officer told her "to mind her own business." When she asked a second time, the police arrested her and charged her with interfering with the police. The court docket sheets reflect two separate procedures on the ticket given Applicant in this incident. On the motion of the prosecutor, the court dismissed one procedure, and in the second procedure, the court issued an attachment (warrant) for Applicant after she failed to appear for her arraignment hearing. In 2004, the prosecutor moved to dismiss the second procedure. In summary, the prosecutor dismissed the charges against Applicant for this incident.¹³

Regarding the attachments for her arrest on matters related to her children (SOR ¶ 2.d), Applicant acknowledged that two attachments were issued in 2008 because the deputies delivered the subpoena for her to the wrong address, and she did not know about the court date for her children. Applicant learned about the attachments from the court clerk. The sheriff did not arrest her on these attachments, and the court dismissed the attachments after she paid the fines. Applicant is not aware of an attachment being issued in 2009, but if the court issued an attachment it must be related to one of her children missing a court date. Under the laws of the state in which she lives, if her children are required to appear in court for behavior problems in school or otherwise, as their parent, she must also appear in court as the responsible parent.¹⁴

¹¹GE 5; Tr. 32-33, 35.

¹²GE 6; Tr. 29.

¹³GE 5; GE 6; Tr. 30.

¹⁴GE 5; Tr. 32.

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 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 an 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.

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 the following are potentially applicable:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant developed financial problems when she and her former husband lost everything in a natural disaster, including their car. Her husband defaulted on his car loan and several small 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 the following 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.

Applicant's financial problems arose after she lost her job, home, and belongings in a major natural disaster in 2005. Over the next two years, she worked only seven months. Since October 2007, Applicant has worked regularly. During this same period of time, Applicant and her husband separated and divorced, causing a significant loss in household income. Although the court ordered her former husband to pay \$1,023 a month in child support, he does not regularly make these payments. As of April 2011, he owed her \$11,000 in back child support. Without this income, Applicant has struggled to pay her customary and usual living expenses. The largest SOR debt, which comprises 80% of the total debt alleged, arises because her former husband stopped making the monthly payments on his car, without her knowledge. In May 2010, Applicant sought assistance from a financial services company to help her consolidate her debts into one monthly payment. After assessing her income and monthly expenses, this company declined to assist her because she did not have sufficient income. She lacks disposable income each month to address her debts. AG ¶¶ 20(b) and 20(c) are partially applicable. Applicant challenged the validity of the medical bill in SOR ¶ 1.e as shown on her credit reports. AG ¶ 20(e) partially applies as her reason for doing so is not explained or documented.

Applicant does not spend money frivolously or use credit cards to buy what she cannot afford. She pays her monthly expenses as best as she can given her limited income and size of household. AG ¶ 20(d) cannot reasonably apply without some effort on her part to contact her creditors and arrange for repayment. Applicant remains legally liable for the balance of her former husband's car loan as a cosigner on his loan. She recently defaulted on her own car loan. The financial concerns are not fully mitigated under Guideline F.

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 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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;

For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. The Government established that Applicant omitted material facts from her October 2009 e-QIP, when she failed to acknowledge her unpaid debts, including an unpaid judgment. This information is material to the evaluation of Applicant's trustworthiness and honesty. In her response, she admitted the facts set forth in SOR allegation 2.a. During her meeting with the security clearance investigator, she indicated that she did not list her unpaid debts because of an oversight, but did not acknowledge an intent to hide her debts from the Government, nor did she acknowledge such an intent at the hearing. When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.¹⁵

Applicant acknowledged her debts when she met with the security investigator, who reviewed debts listed in Applicant's credit report. She explained her omission as an oversight. At the hearing, she indicated that she did not have her credit report and was in a hurry to complete the SF-86 application. She, however, provided detailed information, including an account number, about a paid judgment. Given the specificity of this information, her explanation for the omission of any information about her unpaid debts is not credible. The Government has established that the Applicant intentionally omitted material information from her 2009 e-QIP under AG ¶ 16(a).

Concerning the remaining allegations under Guideline E, the Government argues that these minor criminal matters are evidence of rules violation. Individuals are required to comply with the laws and the rules of society. Applicant's involvement in these criminal matters is sufficient to establish the Government's case under AG ¶ 16(d)(3).

¹⁵See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

AG ¶ 17 provides conditions that could mitigate security concerns:

(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; and

(f) the information was unsubstantiated or from a source of questionable reliability.

While failure to comply with the law is clearly a violation of society's rules about conduct, the facts surrounding the allegations in SOR ¶¶ 2.b-2.d do not reflect a deliberate attempt to violate the laws. When her children's conduct requires a court appearance, Applicant must also appear with them in court. Applicant did not receive the court subpoenas or summons with the hearing date. Her failure to appear was not because she chose to ignore the request of the court. Rather, she was unaware that a court date had been set. She paid the fines required to release the attachments and appeared in court with her children. Applicant's arrest in 1999 occurred because, unknown to Applicant, her sister-in-law stole candy from a convenience store. In 2000, she legitimately asked the police about the reason for arresting her husband twice. The police arrested her because the police interpreted her question as an interference with an arrest. Her arrests occurred over ten years ago and involved minor criminal matters. The circumstances surrounding her arrests do not cast doubt on her reliability, trustworthiness, or good judgment and do not place her in a position of vulnerability to exploitation, manipulation, or duress. Applicant has mitigated the Government's concerns in SOR allegations 2.b-2.d under AG ¶¶ 17(c) and 17(e). Applicant has not mitigated the Government's concern under SOR allegation 2.a.

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 is a single mother with four children dependent upon her. Her children's father does not consistently provide her with the monthly child support directed by the court. Her financial problems arose after she lost her job, home and belongings in a major natural disaster in 2005. Her subsequent unemployment and divorce made it difficult for her to regain financial solvency. She does not live extravagantly nor does she use credit cards to finance a lifestyle. She pays for the basic necessities of life for her children and herself on a limited income. Her largest delinquent debt resulted from her former husband's default on the car loan without her knowledge. However, despite her consistent employment since October 2007, she recently defaulted on a car loan, and she has not contacted her creditors to make repayment arrangements of her undisputed debts. In weighing all these factors related to her finances, I find that Applicant has not mitigated the Government's security concerns about her finances. Because I find that she intentionally omitted information about her unpaid debts, she has not mitigated the Government's concerns under Guideline E. Her past minor criminal matters are not a security concern.

Overall, the record evidence leaves me with questions and 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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a-1.d: | Against Applicant |
| Subparagraph 1.e: | For Applicant |
| Subparagraph 1.f-1.g: | Against Applicant |
| Subparagraph 1.h: | For Applicant |
| Subparagraph 1.i-1.m: | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a: | Against Applicant |
| Subparagraph 2.b: | For Applicant |
| Subparagraph 2.c: | For Applicant |
| Subparagraph 2.d: | For 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