



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



In the matter of:)
)
(Redacted)) ISCR Case No. 10-02649
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

January 31, 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 a security clearance application (SCA) on February 18, 2009. On August 12, 2010, the Defense Office of Hearings and Appeals (DOHA) sent her 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 received the SOR on August 17, 2010; answered it on September 2, 2010; and requested a hearing before an administrative judge. Department Counsel

was ready to proceed on September 30, 2010, and the case was assigned to me on October 5, 2010. DOHA issued a notice of hearing on October 8, 2010, scheduling it for October 26, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 8 were admitted in evidence without objection. Department Counsel also submitted one demonstrative exhibit summarizing the evidence, which is attached to the record as Hearing Exhibit (HX) I. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until November 15, 2010, to enable Applicant to submit additional documentary evidence. She timely submitted AX D through H, which were admitted without objection. Department Counsel's comments regarding AX D through H are attached to the record as HX II. DOHA received the transcript (Tr.) on November 3, 2010.

Findings of Fact

In her answer to the SOR, Applicant admitted the three delinquent debts alleged in SOR ¶¶ 1.a, 1.c, and 1.d. She denied falsifying her security clearance application, as alleged in SOR ¶¶ 2.a-2.d. (Tr. 25.) Department Counsel withdrew SOR ¶ 1.b, and that allegation will be resolved for Applicant. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 52-year-old dispatcher for a defense contractor providing security alarm monitoring services. She has worked for her current employer since October 2006. She has never held a security clearance, but she has held an interim clearance since early 2009. (Tr. 13.)

Applicant's manager for the last four years is familiar with Applicant's family situation and her financial situation. She testified that Applicant has been very loyal, trustworthy, and dependable. Her overall performance has been outstanding, and she has been exceptional in providing customer service. (Tr. 114-18.)

Applicant is a high school graduate. She married in June 1980, and two children were born during the marriage. (Tr. 41.) She was given custody of her eight-year-old granddaughter in March 2005, because her daughter is addicted to heroin. (Tr. 42.) She incurred legal fees of about \$1,500 to gain custody of her granddaughter. (Tr. 60) She worked outside the home from 1992 to 1998, and she was a homemaker from 1998 until she began working for her current employer. (Tr. 53.)

Applicant's 23-year-old son lives with her and her spouse. The son is unemployed because he stays at home to care for Applicant's disabled spouse and their granddaughter. (Tr. 53-54.)

When Applicant submitted her SCA on February 18, 2009, she answered "No" to four financial questions: question 26e, asking if she had a judgment entered against her; question 26g, asking if she had any bills or debts that were turned over to a collection agency; question 26m, asking if she had been more than 180 days delinquent on any

debt; and question 26n, asking if she was currently more than 90 days delinquent on any debt. Her response to question 26e was correct, because the judgment alleged in SOR ¶ 1.a was entered on February 23, 2009, after she submitted her SCA. However, she did not acknowledge or disclose the delinquent debts alleged in SOR ¶¶ 1.a, 1.c, and 1.d. She admitted all three debts in her answer to the SOR, and they are reflected on her credit bureau reports dated April 29, 2010; November 5, 2009; and March 24, 2009. (GX 4, GX 5; GX 6.)

During an interview in April 2009, Applicant told a security investigator that she was not aware of the three delinquent debts alleged in SOR ¶¶ 1.a, 1.c, and 1.d when she submitted her SCA. She denied any intentional deception. (GX 3 at 3-4.)

At the hearing, Applicant admitted that she knew she had overdue bills when she filled out her SCA. She testified that she answered “No” to the financial questions because she did not know which ones were late. She admitted at the hearing that she should have answered “Yes” and explained that she did not know which bills were late. (Tr. 45-46.) She also testified that she did not know that she could add comments to her application, even though she had added comments to several of her responses on other topics. (Tr. 93, 100.) She admitted that she found it embarrassing to be in financial distress. (Tr. 96-97.) She admitted that she knew in early 2008, about a year before she submitted her SCA, that the credit card account alleged in SOR ¶ 1.a was at least eight months delinquent and that the delinquency had not been resolved. (Tr. 65, 88-89.)

Applicant’s spouse became physically disabled in February 2005, significantly reducing the family income. He received disability compensation of \$568 per week until he began receiving monthly Social Security payments of \$1,829 and a \$1,000 monthly pension about a year ago. (Tr. 57-58.) Applicant was unable to find a job until she started her current job in October 2006. (GX 3 at 4.)

In July 2008, Applicant’s home was damaged by fire, and many of her financial records were lost. They were unable to live in the home for three weeks. The loss of financial records complicated their financial situation. (Tr. 45.)

Applicant’s spouse handled the family finances for most of their married life, but Applicant’s son took over the finances after her spouse was disabled. Applicant has handled the finances since October 2008. (Tr. 62.) Her spouse sometimes interfered with her financial management by making telephonic payment agreements with their creditors, without informing Applicant or their son. Applicant had the land line telephone disconnected to keep her spouse from making further payment promises without her knowledge. (Tr. 67-68.)

Applicant negotiated a payment plan for the credit card debt alleged in SOR ¶ 1.a, providing for automatic withdrawals of \$400 per month from her bank account. She made 13 consecutive payments from October 2009 through October 2010, totaling \$5,200 and reducing the balance \$3,810. (AX B; AX G.)

The credit card debt for \$3,421, alleged in SOR ¶ 1.c, is unresolved. Applicant testified that she was paying \$100 per month before the fire, but she did not make any payments after the fire. (Tr. 70.) She did not produce any documentary evidence of payments. Her current balance is the amount alleged in the SOR. (AX E.) During the April 2009 security interview, she told the investigator her son or her spouse had agreed to settle the debt for that amount. (GX 3 at 4.) However, the debt has not yet been settled.

When the debt alleged in SOR ¶ 1.d was reduced to judgment, it was for \$5,272, less than the \$12,500 alleged in the SOR. (GX 7; AX F.) No payments have been made on the unsatisfied judgment.

In May 2010, Applicant's spouse negotiated a payment plan for delinquent county taxes of \$1,413, including penalties and interest, for 2008 and 2009. One \$500 payment has been made pursuant to that agreement. (AX C.) Applicant and her spouse still owe about \$900. (Tr. 75.) She expects to owe about \$4,400 for tax year 2010. (Tr. 73.) The delinquent property taxes are not alleged in the SOR.

Applicant testified that their home mortgage payments, electric bill, and water bill are current. The federal taxes are current, and they used their \$3,000 tax refund from last year to pay bills. (Tr. 83-84.) The cable service bill is delinquent and has not been paid since June or July 2010. Their cable service has been cut off for nonpayment. (Tr. 75-77.) The delinquent cable service bill is not alleged in the SOR.

Applicant's normal take-home pay is about \$1,300 per month, and her husband receives \$1,825 per month in Social Security payments plus a \$1,000 monthly pension. They receive \$200 per month on behalf of the granddaughter in their custody. Their total monthly expenses are about \$3,600, and they are paying \$400 per month on the debt alleged in SOR ¶ 1.a, leaving a net remainder of about \$300. Applicant testified that if they adopt their granddaughter, the granddaughter will receive about \$800 per month. (Tr. 78-83; AX H.) They have no savings. (Tr. 83.)

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's admissions, corroborated by her credit bureau reports and the court records reflecting judgments against her, establish 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"). Thus, the burden shifted to 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).

Applicant's unpaid personal property taxes and delinquent cable service bill were not alleged in the SOR. Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered these two delinquencies for these limited purposes.

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). Applicant's delinquent debts are ongoing and numerous. However, Applicant receives some credit under this mitigating condition because her delinquent debts were caused largely by her spouse's disability and reduction in income, a situation that is unlikely to recur now that their income has stabilized.

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 encountered several conditions beyond her control: her husband's disability, her inability to find employment for several months after her husband's disability, the fire in their home, and the added financial burden of raising her granddaughter because of her daughter's heroin addiction. The loss of her financial records made it more difficult for Applicant to track her debt payments.

The second prong of this mitigating condition is more problematic. Applicant did not resume her \$100 payments to the creditor in SOR ¶ 1.c. after the fire. She did not respond to the settlement offer on that debt, even though her federal tax return would

have covered most of it. She has done nothing to resolve the debt in SOR ¶ 1.d. I conclude that AG ¶ 20(b) is not fully established.

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 has not sought or received financial counseling, and her financial situation is not under control.

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). The concept of good faith “requires a showing that a person acts 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).

An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I conclude that AG ¶ 20(d) is not fully established. Applicant has initiated a payment plan for the debt in SOR ¶ 1.a, but she has no cogent plan, beyond well-intentioned aspirations, for addressing the other delinquent debts.

Security concerns under this guideline also can be mitigating by showing that “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). This mitigating condition is not established because Applicant has not disputed any of the debts alleged in the SOR.

Guideline E, Personal Conduct

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

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.

The relevant disqualifying condition in this case is AG ¶ 16(a): “deliberate omission, concealment, or falsification of relevant facts from any personnel security

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

Applicant’s response to question 26e on her SCA, pertaining to judgments against her, was not false, because the judgment alleged in SOR ¶ 1.a was entered after she submitted her SCA. Her denial of falsifying her response to question 26g, asking if any of her debts had been referred for collection, is plausible and credible, because her spouse and her son were handling the debts until 2008, and the evidence does not show when she learned that collection agencies had taken over the debts. However, her multiple and conflicting explanations for not disclosing her delinquent debts in response to questions 26m (debts delinquent for more than 180 days) and 26n (debts currently delinquent more than 90 days) are not plausible or credible. While she may not have fully understood the implications of a false answer on her SCA, she admitted she knew her answers were wrong, and she admitted knowing that the debt alleged in SOR ¶ 1.a was more than eight months delinquent when she submitted her SCA. I conclude that the disqualifying condition in SOR ¶ 16(a) is established.

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 there is no evidence that Applicant attempted to correct her omissions before she was confronted with the evidence by a security investigator.

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). Falsification of an SCA is not “minor,” because it undermines the integrity of the security clearance process. Applicant’s falsification was recent because it involved her current SCA, and it did not occur under unique circumstances. To her credit, there is no evidence of other falsifications. However, her lack of candor casts doubt on her current reliability, trustworthiness, and good judgment. I conclude AG ¶ 17(c) is not established.

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 found herself in financial distress as a result of several unfortunate circumstances. Although she spent most of her adult life as a homemaker, she gained a reputation in her current job as loyal, trustworthy, and dependable. As of the date of the hearing, she had held an interim clearance for more than a year without incident. Her reputation for exceptional customer service is consistent with the devotion she has shown to her family. She is embarrassed by her financial situation, and her declared intention to resolve it is genuine. However, she has not yet been able to formulate a cogent plan for attaining financial stability. Her lack of candor on her SCA raises serious security concerns. Her testimony at the hearing indicated that she does not fully comprehend the need for absolute candor in matters involving national security.

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**

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant (withdrawn)
Subparagraphs 1.c-1.d:	Against Applicant

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

Subparagraphs 2.a-2.b:

For Applicant

Subparagraphs 2.c-2.d:

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