



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



In the matter of:)
)
) ISCR Case No. 10-07104
)
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

11/30/2012

Decision

MASON, Paul J., Administrative Judge:

Applicant’s negotiation and settlement of five out of six creditors warrants a finding in her favor under the financial considerations guideline. On the other hand, Applicant’s contradictory explanations for falsifying her security form in February 2010, and her current refusal to admit she falsified the form continues to raise trustworthiness and security concerns under the personal conduct guideline that have not been mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP, Government’s Exhibit (GE 1)) on February 25, 2010. She was interviewed by an investigator from the Office of Personnel Management (OPM) on April

8, 2010. The interview summary appears in GE 2, Applicant's interrogatory answers, dated January 23, 2012. In response to a second group of interrogatories (GE 3), Applicant supplied updated information about delinquent debts, several of which are listed in the SOR.

On March 7, 2012, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to 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's answer to the SOR was notarized on April 17, 2012. DOHA issued a Notice of Hearing on September 18, 2012, for a hearing on October 1, 2012. The hearing was held as scheduled. Five Government exhibits (GE 1 through GE 5) were admitted in evidence without objection. Applicant's responses to GE 2 warrants further discussion under Rulings on Procedure. Applicant testified and her six exhibits (AE A through AE H) were admitted into evidence without objection. There is no AE E. Applicant's exhibits were admitted into evidence without objection. The transcript was received on October 5, 2012. The record closed on October 16, 2012.

Rulings on Procedure

Under Section 3 of GE 2 (first set of interrogatories), Applicant was asked whether the interview summary accurately reflected the information she provided to the investigator on April 8, 2010. She inserted an "X" in the space next to the word "Yes." She inserted an "X" next to the word "No." Under Section 4 in space provided for an explanation of a "No" answer to Section 3, Applicant explained she was a victim of identity theft, that her identity was used for several different purposes, and that she enrolled in a program to protect and investigate the misuse of her identity. Under Section 5 of the exhibit, Applicant was advised she could add information discussed during her April 2010 interview. She indicated she discussed the payments and benefits she received with the state unemployment compensation division. (SOR ¶ 2.d) She also discussed the incorrect addresses that were in her file pertaining to state unemployment compensation. Under Section 6 of the exhibit, Applicant was asked whether the additional information she had furnished under Sections 4 and 5 allowed her to adopt the investigator's summary as an accurate reflection of the interview. She was also asked if the summary could be used at a hearing to determine her security suitability. She placed a line in the space next to the word "No." A reasonable interpretation of Applicant's response to Section 6 of GE 2 is that she did not want the interview summary to become a part of the hearing record even after she supplied additions. However, at the hearing, she stated she had no objection to GE 2 being admitted

in evidence. (Tr. 16-17) I find that Applicant's earlier refusal to adopt the interview summary is extinguished by her failure to object to the exhibit at the hearing.

Findings of Fact

Applicant is 31 years old and single. She has an eight-year-old daughter. She has been employed as a management analyst since December 2009.

The SOR contains seven allegations under the financial considerations guideline (SOR ¶ 1). SOR ¶ 1.e is resolved in Appellant's favor because it identifies the same account that is found in SOR ¶ 1.a. Applicant denied all six allegations under SOR ¶ 1 because she paid or settled the accounts. She claimed the account identified in SOR ¶ 1.g did not belong to her because she disputed the account and it was removed from her credit report.

Applicant denied the four allegations under the personal conduct guideline (SOR ¶ 2). The reasons for her denials will be discussed below.

Financial Considerations

Applicant's financial problems were caused by her unemployment from September 2007 to July 2008 when her employer lost its contract with the Government. (e-QIP at 20) She enrolled in a consumer credit repair company to consolidate her debt and negotiate settlements with her creditors. She indicated that she had to take a loss (presumably from costs of signing a contract with the company) when the company did not accomplish what they promised. She indicated that she contacted and resolved several of the debts through settlements or payment plans. Applicant also stated that the issues with the state department of unemployment compensation (SOR ¶ 1.h) would be resolved by February 7, 2012. (GE 3)

Current Status of SOR Debts

SOR ¶ 1.a. The creditor (installment account) received a judgment against Applicant in April 2008 for \$5,856. On January 23, 2012, Applicant indicated the balance owed was \$4,500. On August 29, 2012, Applicant settled the judgment for \$2,500 by cashier's check (AE A) The same account is cited in ¶ 1.e.

SOR ¶ 1.b. In July 2007, the credit card account was charged off as a bad debt in the amount of \$2,128. The account was settled on March 23, 2012 for \$1,012. (AE B)

SOR ¶ 1.c. In January 2007, this credit card account (\$2,257) was purchased by a collection agency. Applicant was notified on January 24, 2012, that her payment of \$315 satisfied the account in full. (AE C)

SOR ¶ 1.d. In February 2007, this account (\$1,550) was purchased by a collection agency. On February 29, 2012, Applicant was notified that after receiving her final payment, the account was settled. (AE D)

SOR ¶ 1.e. This account is a duplicate of SOR ¶ 1.a.

SOR ¶ 1.f. In February 2007, this account (\$1,360) was purchased by a collection agency. On February 10, 2012, Applicant was notified the account was settled on February 7, 2012. (AE F)

SOR ¶ 1.g. (telecommunications account) Applicant submitted a credit report dated September 28, 2012, to support her claim that since the credit report did not list the telecommunications account, the account was not her responsibility. She also claimed that she had formally disputed the account and had it removed. (Tr. 72-75) Because the account does not appear in GE 4, GE 5, or AE H, SOR ¶ 1.g is resolved in Applicant's favor.

SOR ¶ 1.h. (overpaid unemployment benefits) On April 8, 2012, in an interview with an OPM investigator, Applicant denied receiving unemployment benefits between July 2008 and December 2008 because she was working for a defense contractor. (GE 1 at 18, GE 2) No other evidence is in the record to support this allegation. Applicant submitted a two-page exhibit from the state department of unemployment compensation. The exhibit contains Applicant's name, address, codes, formulas, and numerical entries. On the second page of the exhibit, an individual wrote that Applicant has a zero balance, and to contact the individual with any questions. It is difficult to determine whether the handwriting is in ink or pencil. The individual did not provide her identity on the exhibit to enhance the authenticity and credibility of her declaration about the zero balance.

Applicant explained that she was a victim of identity theft in 2009 when she began receiving several bill notices for accounts she had not opened. None of those accounts are listed in the SOR. (Tr. 65-66)

Personal Conduct

In her April 2012 answer to SOR ¶ 2.a, Applicant denied she falsified Section 26(e) of her e-QIP. She claimed, "I just wanted to state actual facts before I responded to the questions." She denied she falsified SOR ¶ 2.b (Section 26 (g) of her e-QIP. She claimed, "I believe I overlooked the question however the answer was yes." She also denied she

falsified SOR ¶ 2.c (Section 26(h) of her e-QIP). She contended that, “This has happened however at this point I owe no one. This was not purposely done. I deny the fact that this was intentional.” In response to SOR ¶ 2.d, she stated the matter was resolved and she was awaiting the documentation.

At the hearing, Applicant testified that she did not mean to falsify information in her e-QIP. She testified, “Okay, that was not my intention, to falsify anything.” (Tr. 31) She was asked why she answered “No” to SOR ¶ 2.a (Section 26(e) of her e-QIP) when she should have answered “Yes.” She testified, “That should have been - - that questionnaire - - that answer on the questionnaire should have been stated ‘yes’, because the judgement was filed against me.” (Tr. 31) Applicant was asked the same question a second time. She testified, “It was an honest mistake, Sir. (Tr. 32) Appellant was asked whether she understood the question in the e-QIP. She replied, “Kind of, sort of.” Then she stated, “I intended to put a ‘yes’ there, and that should have been a ‘yes’. This is actually why I am being investigated, because I have judgements. I had judgements.” (Tr. 32) Applicant was asked whether she had any other explanations besides the ones provided. She testified, “I should have answered it another way, Sir.” (Tr. 32-33) Then she stated she should have reviewed her answers before submitting the e-QIP. (Tr. 33)

Character Evidence

Applicant considers herself an honest person who is trying to rebuild her financial security. (Tr. 83) She furnished no independent character evidence from her employer or from the community in which she lives.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

The disqualifying and mitigating conditions should also be evaluated in the context of nine general factors known as the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision for security clearance eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.1.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15., the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion of establishing that it is clearly consistent with the national interest to grant him a security clearance.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The Government has the responsibility of presenting sufficient information to support all allegations of the SOR. Based on the credit reports, Applicant's interrogatory responses, and the record transcript, AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*) are applicable.

Five mitigating conditions under AG ¶ 20 are potentially applicable: AG ¶ 20(a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, and good judgment*); AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*); AG ¶ 20(c) (*the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*); and AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply.

Applicant has exercised good judgment in resolving her indebtedness. Her exhibits demonstrate that her affiliation with the credit repair agency educated her about contacting and negotiating settlements with the listed creditors. Her efforts have resulted in documented settlements or payment completion of the judgment in SOR ¶ 1.a, and the

delinquent accounts listed in SOR ¶¶ 1.b, 1.c, 1.d, and 1.f. SOR ¶ 1.e is resolved in Applicant's favor because it is a duplicate entry of the same account that became a judgment identified in SOR ¶ 1.a. I find SOR ¶ 1.g in Applicant's favor. Even though Applicant did not produce documentation that she filed an official dispute with the credit agency to have the debt removed from her credit report, the account does not appear in the credit reports admitted into evidence. I reach the same conclusion concerning SOR ¶ 1.h. (unemployment compensation) because the Government did not present sufficient evidence to support the allegation, and even though I have some lingering questions about the credibility of AE G. In sum, Applicant's current refusal to admit she falsified her e-QIP casts doubt on her trustworthiness and judgment, and militates against the application of AG ¶ 20(a). However, AG ¶¶ 20(b), 20(c), and 20(d) apply.

AG ¶ 20(e) (*the individual has a reasonable basis to dispute that 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*) does not apply. Though SOR ¶ 1.g was removed from Applicant's credit report, Applicant did not provide documentary evidence setting forth the basis of the dispute and removal.

Personal Conduct

The security concern for personal conduct is set forth in AG ¶ 15:

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.

AG ¶ 16 contains two disqualifying conditions that are potentially applicable: AG ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire ... to ... determine security clearance eligibility or trustworthiness*) and 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 the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information; (2) disruptive, violent, or other behavior in the workplace; (3) a pattern*

of dishonesty or rule violations; and (4) evidence of significant misuse of government or other employer's time or resources).

Applicant provided several explanations for incorrectly providing “No” answers to the three financial questions identified in SOR ¶¶ 2.a, 2.b, and 2.c (Section 26(e), 26(g), and 26(h)) of her February 2010 e-QIP. Her answer to SOR ¶ 2.a implies that she was not sure that she had a judgment (SOR ¶ 2.a) entered against her when she filled out the e-QIP. However, her answer contradicts her testimony acknowledging she should have answered “Yes” to the question because she knew she had a judgment and other delinquent accounts at the time she completed the e-QIP. Knowing that she had a judgment undercuts her secondary claim that she made an honest mistake in answering “No” instead of “Yes” to the three e-QIP questions. In her third explanation, she concedes the falsifications, but seeks to be vindicated by her payment of all the delinquent accounts listed in the SOR. After carefully weighing Applicant's answers and her testimonial responses to SOR ¶¶ 2.a, 2.b, and 2.c, it is clear that she deliberately falsified the e-QIP to conceal relevant information about her financial problems and improve her chances of receiving security clearance access.

SOR ¶ 2.d alleges that Applicant received four notices from the state department of unemployment compensation regarding overpayment of wages and benefits totaling \$6,840 between July 20, 2008 and December 27, 2008. The conduct would demonstrate a pattern of dishonesty under AG ¶ 16(d). However, without evidence by the Government to support any element of the allegation, the disqualifying condition does not apply and AG ¶ 2.d is resolved in Applicant's favor.

There are three mitigating conditions under AG ¶ 17 that are potentially applicable to the circumstances in this case. Those conditions are: AG ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment or falsification before being confronted with the facts*); AG ¶ 17(c) (*the offense was 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*); and AG ¶ 17(d) (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur*)

After a careful evaluation, I conclude that none of the mitigating conditions apply. AG ¶ 17(a) does not apply because Applicant did not make any efforts to correct the omission until she was confronted with the interrogatories that identified the accounts listed in the SOR. AG ¶¶ 17(c) and 17(d) do not apply because Applicant continues to deny she falsified her e-QIP, thereby raising lingering security concerns regarding her trustworthiness and reliability.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations and personal conduct guidelines. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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 a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is 31 years old and is raising an eight-year-old daughter. She has been working for her current employer for almost three years. Because she did not provide character evidence, I am unable to reach any conclusions about her job performance or reputation in her community. Applicant demonstrated good judgment by enrolling in a debt repair company to help her contact and negotiate settlements with the listed creditors. Even though she had to absorb a loss after canceling the contract with the company for not achieving the results she desired, she continued to negotiate documented settlements with the listed creditors.

Weighing against the foregoing positive evidence is the negative evidence of Applicant's deliberate falsifications of her e-QIP she certified, signed, and submitted to the Government in February 2010. Though given an opportunity to admit her deliberate falsifications at the hearing, she decided to perpetuate the falsehoods. Her lack of candor raises continuing security concerns under the personal conduct guideline that have not been mitigated.

Formal Findings

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

Paragraph 1 (Guideline F):	FOR APPLICANT
Subparagraph 1.a through 1.h:	For Applicant
Paragraph 2 (Guideline E):	AGAINST APPLICANT
Subparagraph 2.a through 2.c:	Against 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 national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge