



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



In the matter of:)	
)	
)	ISCR Case No. 10-08613
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

December 30, 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) on July 12, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on July 2, 2011, 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 acknowledged receipt of the SOR on July 14, 2011. She submitted a notarized, written response to the SOR allegations dated August 2, 2011 and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on September 14, 2011. Applicant received the FORM on September 29, 2011. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She did not submit a response. DOHA assigned this case to me on December 12, 2011. The Government submitted eight exhibits, which have been marked as Items 1-8 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 4, and the SOR has been marked as Item 1.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.j-1.l, 1.o, 1.p, 1.r-1.z, and 1.cc of the SOR. Without distinguishing, she admitted and denied ¶¶ 1.c-1.i. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶¶ 1.m, 1.n, 1.aa, and 1.dd of the SOR.¹ She neither admitted nor denied the factual allegations in ¶¶ 1.q, 1.bb, and 2.a. These are deemed denied. She provided a brief explanation to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 31 years old, works as an administrative assistant for a Department of Defense contractor. She began her current employment in July 2010. She attends a technical college part-time.²

Applicant married in April 2003 and divorced in January 2010. She has two living sons, who are 9 years old and 5 years old. A third son is deceased. Applicant receives sporadic child support from her former husband.³

Applicant worked as a medical assistant and office manager from 2000 until 2007. She work in data sustainment for almost three years prior to obtaining her current

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). 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. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²Item 5; Item 6.

³Response to SOR; Item 5.

position. Her employer laid her off in 2007, and another employer laid her off in 2010. In each situation, her time out of work was short. However, she provided no information showing that she lost income when she found new jobs in 2007 and 2010. Applicant has not provided any information indicating her current income and expenses.⁴

In her response to the SOR, Applicant indicated that she paid the debts in SOR ¶¶ 1.j and 1.t through 1.x, but she did not provide any documentation showing these debts are paid. She also indicated that she was paying the judgment in SOR ¶ 1.a and that she was paying the debt in SOR ¶ 1.cc. Again, she did not provide documentation which showed her payments. She appeared to question the validity of the debts in SOR ¶¶ 1.n, 1.aa, and 1.dd. She did not provide proof that she challenged the validity of these debts with the creditors or the credit reporting companies. Concerning SOR allegation 1.z, she did not submit documentation which indicates that her house was sold or that the mortgage lender issued a 1099A or 1099C Internal Revenue Service form, which would reflect that she did not owe a balance on her defaulted mortgage loan.⁵

Applicant indicated that some of the debts in SOR ¶¶ 1.c through 1.i belong to her former husband. She did not specifically identify which debts belong to her former husband, nor did she provide information to support her allegation that these debts are his. The remaining debts listed in the SOR, except 1.q, remain unpaid. SOR ¶ 1.q is the same as the judgment in SOR ¶ 1.a. SOR allegation 1.q is found in favor of Applicant.⁶

When she completed her security clearance applicant (e-QIP), Applicant answered “no” to the questions asking if she had any debts more than 180 days delinquent; was she more than 90 days past due on any current debts; had she defaulted on any loans; had any loans been turned over to a collection agency; or had any account or credit card been suspended, charged off, or cancelled for failing to pay as agreed. When she met with the security clearance investigator in August 2010, Applicant denied any knowledge of many of the debts listed in the SOR. She also identified several accounts and described the type of account. She acknowledged failing to pay these accounts because of unemployment. She indicated that she did not list these accounts on her application because she believed her husband had “taken care of” the payments on these debts. During her marriage, her husband paid the household bills.⁷

⁴Item 5; Item 6.

⁵Response to SOR.

⁶Response to SOR; Item 6; Item 7; Item 8.

⁷Item 6.

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 for obtaining 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 significant financial problems during her marriage and as a result of her divorce and job layoffs. Most of the 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 200). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant’s debts are current and on-going; therefore AG ¶ 20(a) does not apply. Applicant’s debts arose, in part, from her divorce and her job loss, which are factors beyond her control. However, she has not provided documentation to show that she acted reasonably towards the resolution of her debts since her divorce and job loss. Likewise, she has not provided any documentation to show that she contacted her creditors in good faith or that she has resolved any of her debts. She has not shown that she disputed debts unknown to her. Her current income and expenses are unknown, making it difficult to assess her ability to pay her current bills or past-due accounts. She has not shown a track record for paying her debts. Thus, she has not mitigated the Government’s security concerns about her finances.

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.

For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. The Government established that Applicant omitted material facts from her July 2010 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. During her meeting with the security clearance investigator, she indicated that she did not list her unpaid debts because she had no knowledge of many of the debts and because she thought her husband had taken care of paying the credit cards and past-due accounts she did know. She has never acknowledged an intent to hide her debts from the Government, nor has she acknowledged such an intent in her response to the SOR. 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.⁸

Applicant acknowledged some of her debts when she met with the security investigator, who reviewed debts listed in Applicant's credit report. She explained her omission as lack of knowledge about the existence of many debts and on a belief that the debts had been paid by her former husband. Without a hearing to assess her credibility, a determination cannot be made about whether she had the requisite intent to deceive the Government about her known debts. The Government has not established that the Applicant intentionally omitted material information from her 2010 e-QIP under AG ¶ 16(a). Guideline E is found in favor of Applicant.

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):

⁸See 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)).

(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. When her problems first began, Applicant was married. She lost her job in 2007 and again in 2010. She obtained new employment quickly; however, she did not provide information about changes in her income when she changed employers. Her divorce in 2010 impacted her finances. The lack of steady child support payments from her former husband also impacted her income and ability to pay her debt. While she indicated that she paid some debts and is paying two debts under a payment plan, she provided no documentation showing payments of these debts. Although she disputes some debts, she has not shown that she took any formal action with the creditors or credit reporting companies to dispute those debts which are not hers. This record lacks any favorable evidence which reflects positively on possible debt payments by Applicant. Her finances remain a security concern.

The Government failed to establish that Applicant intentionally falsified her answers on her security clearance application, although it established that she omitted material information about her finances.

Overall, the record evidence leaves me with questions or 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 under Guideline F. Guideline E, however, is found in her favor.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraphs 1.r- 1.dd:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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