



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



In the matter of:)	
)	
)	ISCR Case No. 10-10973
)	
Applicant for Security Clearance)	

Appearances

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

December 29, 2011

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations and Personal Conduct concerns. She has over \$40,000 in delinquent debt and failed to establish that her financial situation is under control. She falsified her security clearance application (SCA) when she failed to disclose her delinquent debt. Clearance is denied.

Procedural History

On July 25, 2011, the Defense Office of Hearings and Appeals (DOHA) made a preliminary determination to deny Applicant access to classified information.¹ The basis for this decision is set forth in a Statement of Reasons (SOR), which alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Applicant submitted her response to the SOR on August 29, 2011 (Answer).

¹ This 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 (AG) implemented by the Department of Defense on September 1, 2006.

She admitted 10 of the 12 debts alleged in the SOR, denied falsifying her SCA, and requested a hearing.

On November 1, 2011, Department Counsel filed its ready-to-proceed. After coordinating with the parties, I scheduled the hearing for December 12, 2011, via video teleconference.² At hearing, Department Counsel offered Government Exhibits (GE) 1 through 5, which were admitted into evidence without objection. Department Counsel also submitted a demonstrative aid, setting forth each of the debts and their current status, which was marked and accepted into the record without objection as Hearing Exhibit III. Applicant appeared at the hearing and testified on her own behalf. She did not offer any exhibits and I kept the record open until December 27, 2011, to provide her the opportunity to submit matters for my review. She submitted Applicant's Exhibit (AE) A and it was admitted into evidence without objection. The transcript (Tr.) was received on December 20, 2011.

Findings of Fact

Applicant is 40 years old. Her mother is deceased and she divorced in 2004. She graduated high school in 1989 and then attended college. She studied accounting, but never completed the coursework necessary for a degree. She has primarily worked in the shipping industry and started working for DoD in 1997, as a contractor, supplying overseas military bases. She has never held a security clearance.³

Applicant's financial troubles began in October 2006 when she was laid off by her former employer. She was unemployed until February 2008. Even after finding work, Applicant was making less than at her last job. She has been with her current employer since October 2009.⁴ She is a logistics manager, assuring "the end-to-end movement of cargo."⁵ She testified that her current job was a "bump" in pay, and her current salary is between \$75,000 and \$80,000 per year.⁶

Applicant was involved in a serious auto accident a few days before starting her current job in October 2009. She has incurred a significant amount of medical expenses as a result of the accident, but it has all been paid for by insurance. None of the debts listed in the SOR relate to any medical bills or were a consequence of the accident. She is in the midst of litigation and plans to use the expected settlement proceeds to satisfy her past-due debts. Her personal-injury attorney also assists clients facing financial

² As a time-management tool, I issued a prehearing order requiring the parties to serve one another and me their anticipated exhibits prior to the hearing. See Hearing Exhibit I.

³ Tr. at 26, 47-41, 79-81; GE 1.

⁴ Tr. at 26-28, 43-45; GE 1; GE 2.

⁵ Tr. at 47.

⁶ Tr. at 46-47.

problems. Last year, Applicant asked her attorney to assist her in consolidating her past-due debts.⁷ Applicant believes her attorney is “dragging his feet” because the attorney has suggested that revealing her financial situation might “hurt” her personal injury case.⁸ She plans to hire another attorney to help her address her debts if her current counsel does not help her in the near future.⁹

Applicant accumulated a substantial amount of debt, mostly credit card debt, while she was unemployed. She admits 10 of the 12 debts alleged in the SOR, totaling \$41,196. (SOR, ¶¶ 1.b – 1.g, 1.i – 1.l). Nine of these ten debts are credit card debts and total \$41,000. (SOR, ¶¶ 1.b – 1.g, 1.i – 1.k). Applicant’s credit cards became delinquent in about 2008. She received collection notices and calls. She has not contacted the majority of her creditors to resolve her past-due accounts.¹⁰

Applicant satisfied the debt alleged in ¶ 1.k (\$839) the Friday before her Monday hearing. At hearing, she promised to resolve some of the other minor debts alleged in the SOR by the end of the week. She did not submit proof of payment of any other debt alleged in the SOR, except ¶ 1.k.¹¹

Applicant has about \$200 a month in disposable income, but has not used this money to satisfy her past-due accounts, except for recently paying the debt alleged in ¶ 1.k. She testified that she is currently living within her means and has not accumulated any further debt.¹² She did not submit a budget or evidence that she has taken a financial counseling course. She testified that her delinquent debt has been and continues to be “overwhelming.”¹³

In May 2010, Applicant submitted her SCA. Section 26 of the SCA required her to reveal any derogatory financial information, including debts that were then over 90-days delinquent. Applicant denied she had derogatory financial information to report. Four months later, in September 2010, she was questioned by a government investigator about her delinquent debts and the omission of such from her SCA. She

⁷ Tr. at 28-29, 55-56, 66-72, 88-90. See also GE 2.

⁸ Tr. at 31.

⁹ Tr. at 32-34.

¹⁰ Answer, Tr. at 33, 51-61, 62-63, 65-66. Applicant denied SOR ¶¶ 1.a and 1.h, an unpaid veterinary bill and an unknown debt. She has a reasonable basis to dispute both of these debts. Tr. at 48-51, 61-62. As the resolution of these relatively minor debts, which total less than \$1,200, does not impact the ultimate conclusion in this case, I find in Applicant’s favor as to these debts.

¹¹ Tr. at 32, 58, 63-65; AE A.

¹² Tr. at 32-35, 73-74.

¹³ Tr. at 27.

denied intentionally omitting her delinquent debts. Applicant told the investigator that she did not have the adverse information available when she completed her SCA.¹⁴

Applicant continued to deny that she falsified her SCA at hearing. She testified that she “knew full well (she) was in debt” when she filled out her SCA but, in her mind, the SCA was “incomplete” when she submitted it online. She intended to get a credit report, in order to provide all the information requested, including the specific account information for each of her delinquent debts. She did not save the online version of the SCA and then add the information requested later. Instead, she submitted the “incomplete” SCA.¹⁵ She never informed her security manager that the SCA she submitted online was “incomplete” because:

*I thought the submission would have been up to me. And that's something that I didn't, I don't, I didn't share my debt with my colleagues. And my colleague who is the security officer, on that one, simply because it's something I need to take care of, and I don't want anybody that I have to work with in the office looking down on me. . . The way we work in our office, we're there for a very long time. You know, early in the morning, you know, until whenever at night. 11/12 hours a day. You know, we work in the middle of the night. There's a lot of things, you know, fielding phone calls from whatever, everything that goes bump in the night. And to have somebody look at you, if you look at somebody who's in as much debt as me, and it's been that long, it doesn't look that good. And it really doesn't. And it's horrifying. And I don't want people in my office looking at me like that. So I did not disclose the information to them.*¹⁶

After submitting the SCA online, Applicant printed the SCA and signed the certification claiming that all the information provided was “true, complete, and correct” to the best of her “knowledge and belief and are made in good faith.”¹⁷ When Applicant was asked at hearing why she had not listed her delinquent debt in general terms on the SCA, she claimed that there was nowhere on the form to list this information without providing specific details regarding each delinquent debt.¹⁸

¹⁴ GE 2.

¹⁵ Tr. at 29-30, 82-87.

¹⁶ Tr. at 85-86 (emphasis added).

¹⁷ GE 1, *Signature Forms*; Tr. at 87-88.

¹⁸ Tr. at 84-85 (“But they wanted, what the questionnaire had online were account numbers, balances, when it was incurred, when the card was stopped, and I didn't have that information. And I did not see a place where I could put a verbal in there, that, ‘Yes I have some debt. I need to get all this information to you,’ because it is not one or two items where I might have that, you know, readily available. But it's quite a few items.” *But see* GE 1, *Additional Comments* section (“Use the space below to continue answers to all other items and to provide any information you would like to add.”)).

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 to be 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, administrative judges apply the guidelines 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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." Directive ¶ E3.1.15.¹⁹ An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b).

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. "A clearance adjudication is an applicant's opportunity to demonstrate that, prior to being awarded a clearance, he (or she) actually possesses the judgment, reliability, and trustworthiness essential to a fiduciary relationship with this country."²⁰

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

¹⁹ ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011) ("Once an applicant's SOR admissions and/or the Government's evidence raise a security concern, the burden of persuasion shifts to the applicant to mitigate the concern.").

²⁰ ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

Analysis

Guideline F, Financial Considerations

The security concern relating to financial problems is articulated at AG ¶ 18, as follows:

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.

One aspect of the concern is that an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant's accumulation of over \$40,000 in bad debt since 2008 directly implicates this concern. It also establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

However, an applicant's past or current indebtedness is not the end of the analysis, because "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."²¹ Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. The relevant mitigating conditions are:

- (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;

²¹ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

(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 and provides documented proof to substantiate the basis of the dispute.

None of the mitigating conditions apply. Although Applicant's financial trouble is directly attributable to her lengthy period of unemployment, she failed to establish that she managed her finances in a responsible manner under the circumstances.²² She has had a full-time job since 2008 and has been with her current employer for over two years, but made no efforts to resolve her debts until a few days before her hearing. She has only paid one of the ten SOR debts she admits owing, and still owes over \$40,000 to her overdue creditors.²³ She described her financial situation as "overwhelming" and submitted no evidence that she has taken any concrete steps to put her financial house in order, other than asking her personal injury attorney for assistance in consolidating her debts about a year ago. Applicant's intent to consolidate and satisfy her debts, with the assistance of legal counsel, does not demonstrate that her financial problem is being resolved or under control.²⁴ Her promises to resolve her long-standing debt and recent payment of one of these debts are simply not enough to mitigate the Guideline F concern.²⁵ Applicant's financial problem remains a security concern.

Guideline E, Personal Conduct

The personal conduct concern is set forth at 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

²² See generally ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008) ("the second prong of MC 20(b) requires that an applicant act responsibly under the circumstances").

²³ ISCR Case 09-07792 at 2 (App. Bd. May 10, 2011) ("... evidence that Applicant's debts remained delinquent at the close of the record supports ... conclusion that these debts were ongoing.").

²⁴ ISCR Case No. 09-01015 at 5 (App. Bd. July 16, 2010) ("Applicant's stated intention to hire an attorney sometime after the hearing and seek a reduction of this debt is at best speculative. There is no basis in the record to support a conclusion that such a plan has a reasonable chance of success. As such, it merely suggests a 'potential for eventual debt resolution' rather than for a track record of actual repayment.").

²⁵ ISCR Case No. 99-0012 (App. Bd. Dec. 1, 1999) ("Promises to take actions in the future, however sincere, are not a substitute for a documented track record of remedial actions.")

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 guideline notes several disqualifying conditions that could raise a security concern under AG ¶ 16. I have considered all the disqualifying conditions and find that only AG ¶ 16(a) is applicable:

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.

The security clearance process is contingent upon the honesty of all applicants seeking access to classified information, and begins with the answers provided in the SCA. An applicant should err on the side of over-inclusiveness and, when in doubt, disclose any potential derogatory information that is responsive to a question in the application. However, the omission of material, adverse information standing alone is not enough to establish that an applicant intentionally falsified their SCA. Instead, when an applicant denies an SOR allegation that they falsified a SCA, the Government bears the burden to present substantial evidence that an applicant intentionally did so.²⁶ In resolving such cases, an administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's intent.²⁷

Applicant intentionally falsified her SCA when she failed to disclose her delinquent debts as alleged in ¶ 2.a of the SOR. She was fully aware that she had multiple credit card accounts that were at least 90-days past due when she filled out her

²⁶ ISCR Case No. 07-16511 at 4 (App. Bd. Dec. 4, 2009) (“In the case of an omission in a SCA . . . the Government’s burden of production requires more than merely showing that the omission occurred. Rather, the Government must present substantial evidence that the omission was deliberate.”). See *also* ISCR Case No. 10-04911 at 5 (App. Bd. Dec. 19, 2011) (“Substantial evidence is ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.’”); ISCR Case No. 11-00391 at n. 1 (App. Bd. Dec. 1, 2011).

²⁷ ISCR Case No. 02-12586 at 3 (App. Bd. Jan. 25, 2005) (Appeal Board holds that “(a) when a falsification allegation is controverted Department Counsel has the burden of proving falsification; (b) proof of omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred; and (c) a judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning applicant’s state of mind at the time the omission occurred.”). See *also* ISCR Case No. 02-15935 (Appl. Bd. Oct. 15, 2003) (“A case involving alleged falsification requires a Judge to make a finding of fact as to an applicant’s intent or state of mind when the alleged falsification occurred. As a practical matter, when an applicant denies that he or she engaged in a falsification, proof of the applicant’s intent or state of mind is rarely based on direct evidence, but rather often must rely on circumstantial evidence. It is not mere speculation or surmise for a Judge to make a finding of fact about an applicant’s intent or state of mind based on circumstantial evidence. To the contrary, it is legally permissible for a Judge to make a finding of falsification based on circumstantial evidence of an applicant’s intent or state of mind.”).

SCA in 2010, because she had stopped paying her credit cards in 2008 and had received notices from the creditors. She was required to reveal these delinquent debts on her SCA. She failed to disclose them because she was embarrassed about her financial situation and did not want her coworkers, including her security officer, to find out about it. I did not find her explanation as to why she failed to disclose her delinquent debts on her SCA – that she submitted an “incomplete” SCA with the intent to later include all the information requested – credible. She never followed up with her security officer or informed the Government that her SCA was “incomplete” before being confronted by the Government investigator. I find against Applicant as to SOR ¶ 2.a and further find that AG ¶ 16(a) applies.

AG ¶ 17 sets forth several conditions that could potentially mitigate the personal conduct concern. I have considered all the mitigating conditions under AG ¶ 17, but only AG ¶ 17 (a) merits discussion:

The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the fact.

Applicant did not disclose her delinquent debts or attempt to correct her “incomplete” SCA before being confronted by a government investigator some four months after she submitted the SCA. She denied to the investigator and continues to deny that she falsified her SCA. The Appeal Board has stated that an applicant who deliberately falsifies their SCA commits an “offense that strikes at the very heart of the security clearance process.”²⁸ Applicant’s failure to disclose her delinquent debts on the SCA and failure to correct this omission leaves AG ¶ 17(a) inapplicable. Applicant failed to mitigate the personal conduct concern.

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 an applicant’s conduct and all the relevant circumstances. An administrative judge should consider the nine 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.

²⁸ ISCR Case No. 09-01652 at 7 (App. Bd. Aug. 8, 2011).

I have considered all the favorable and extenuating factors in this case. Applicant has worked for DoD as a government contractor, on and off, since 1997. She has made certain that overseas installations are properly supplied. She suffered economic hardship for two years and had no one that she could rely upon during her time of need. However, she has been gainfully employed for over three years now and, when asked about her financial situation, falsified her SCA. Applicant has a substantial amount of unresolved bad debt and failed to dispel the significant security concerns raised by her financial situation, and her falsification of the SCA. The favorable whole-person factors present in this case do not outweigh the security concerns at issue. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i – 1.l:	Against Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 2.a	Against Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is therefore denied.

Francisco Mendez
Administrative Judge