



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



In the matter of:)
)
) ISCR Case No. 11-00394
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: Richard Morris, Esquire

October 28, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guidelines for Financial Considerations and Personal Conduct. Accordingly, her request for a security clearance is granted.

Statement of the Case

Applicant requested a security clearance by submitting an Electronic Questionnaire for Investigations Processing (SF 86) on July 8, 2010. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request. On May 5, 2011, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the

¹ Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Adjudicative Guidelines (AG).²

In her Answer to the SOR, dated May 19, 2011, Applicant admitted the six debts alleged under Guideline F, and denied the four allegations under Guideline E. She also requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 20, 2011, and I received the case on July 5, 2011. DOHA issued a Notice of Hearing on August 9, 2011. I convened the hearing as scheduled on August 31, 2011.

During the hearing, the Government offered nine exhibits, which I admitted as Government Exhibits (GE) 1 through 9. Applicant testified, and offered ten exhibits, which I admitted as Applicant's Exhibits (AE) A through J. DOHA received the transcript on September 9, 2011.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is a 51-year-old college graduate. She married in 1998 and divorced in 2002. She married her current husband in 2007. She has two daughters, 29 and 24 years old, and one deceased daughter. She also has five step-children, the children of her current husband. Currently, one daughter, a grand-daughter, and a step-daughter live with Applicant and her husband. Other than four years from 1999 to 2003, Applicant has worked for the federal government or federal contractors since 1990. Her positions have been in the fields of budgeting, finance, and administration. She received her first security clearance in 2002, at the secret level. In 2006, she was granted a top secret clearance and, in 2009, she received Sensitive Compartmented Information (SCI) access. (GE 1; Tr. 30, 55-57)

In September 2009, Applicant began work for a federal contractor as a program analyst. Her job involved property management, and required her to locate and inventory property and record barcode numbers, room numbers, and names of persons using the equipment. Applicant stated that none of the property, or the reports she created, was classified or sensitive. On January 21, 2010, Applicant's evaluation showed that she successfully completed her probationary period. Her supervisor noted

² Adjudication of this case is controlled by the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

that she performed her assignment with enthusiasm and professionalism, she was well-organized, had performed a meticulous inventory, and had “identified over 30 missing items.” He also stated that her work was “lauded by the Task Lead.” (GE 4; AE B)

However, starting on March 18, 2010, Applicant received several written warnings concerning her performance. The first concerned inaccuracies in a property report. Applicant reviewed and updated a property report in preparation for a client meeting the following day. The next day, her computer had crashed while she was at lunch and deleted all the updates Applicant had entered. She printed out and presented the report to the client, not knowing that it contained errors resulting from the crash. Other warnings noted that the client felt Applicant was taking too much time to complete the property inventory. Applicant’s task required that she inventory numerous pieces of equipment, determine their locations, serial numbers, and other information. It called for visual room-to-room inspection throughout a federal office building—a task Applicant described as a huge undertaking. She was promised help from another worker, but that person did not contribute to the project. Applicant was still required to complete the report timely. The client complained that Applicant also should have worked faster, as it was her only task. However, Applicant listed seven other tasks that she was also handling at the time. Another warning noted that she retained office cabinet keys at home when she was on sick leave. She informed her task lead that she had them, and told him that a duplicate set was available onsite. She also had her husband bring the keys to the office later during the week that she was ill. (GE 4)

On March 29, 2010, Applicant received a warning that outlined improvements she was expected to make, and required that she complete the property project in 30 days. The following day, Applicant resigned her position, effective immediately, because the client was “unhappy with my performance.” In her memo, she stated that the client had treated her in a belittling and derogatory manner, and that “continuing to work for this client is a no win situation.” She then expressed her satisfaction in working for the company and appreciation of the management team’s support and concern, thanked the company, and wished her colleagues the best in the future. (GE 4; AE A)

The following month, Applicant applied for another position, and learned that her security clearance had been revoked. The Facility Security Officer (FSO) had entered a comment in JPAS in May 2010 stating that co-workers heard Applicant say that because her work was judged unsatisfactory, “they can create these documents from scratch.” The FSO apparently did not hear the comment herself, and does not identify the person who made the comment. The entry also stated that Applicant had removed government documents from her file and placed them in a burn bag to be destroyed. The FSO’s entry continues, “the inference was that she [Applicant] was destroying records to prevent anyone (including the govt) from being able to use the data or benefit from her work.” (GE 9)

When Applicant contacted the FSO to ask why her clearance had been revoked, the FSO stated that inspection of Applicant’s desk after she departed showed missing

sensitive backup documents that concerned classified systems related to Applicant's task, which were later discovered in the burn bag. Applicant claims that the FSO's statement shows she is unfamiliar with Applicant's task, as neither the property Applicant inventoried, nor the related documents she produced, were classified or sensitive. The FSO did not work at the site where Applicant worked. (GE 4)

Applicant's husband testified, and described his wife's termination as "being set up to fail." She was assigned a task and told that another person would assist her to complete it. Although the other person did not help her, Applicant was punished for not completing the task. He described Applicant as the most honest person he has ever known. Applicant's step-daughter, a former Army service member, testified that she now lives with her father and Applicant. She has known her for 16 years, and Applicant has been a mother-figure for her. She trusts Applicant with the care of her daughter. Applicant has a strong moral character, and always gives an honest opinion "even if it hurts." (Tr. 24-35, 36-41)

The senior program analyst at the company where Applicant was terminated also testified on her behalf. He held a top secret security clearance since 2002, and held it while he supervised Applicant at the company from September 2009 to January 2010. He testified that they worked together in a 20-foot by 30-foot room, with three other people. She was assigned to inventory the company's property, including tracking the location and status of software and equipment. She tracked the property online and prepared unclassified tracking sheets using programs such as Excel. She "was not responsible to maintain any top secret information documents nor classified systems files" and her function had "no access to any top secret information whatsoever." Other than the five people who worked in the office, three government managers had access to the room, which they could enter with an access code. The room contained one burn bag. Because they did not handle classified material, everyone used the burn bag to dispose of ordinary unclassified material. He said that anyone who worked in or entered the room could have placed material in the burn bag. He opined that Applicant is of the strongest moral fiber, is completely honest and straightforward, and demonstrates the highest integrity. He also submitted a notarized letter attesting to the above information. (AE C; Tr. 41-54)

Applicant's co-worker, who worked with her in the agency where she was terminated, submitted a notarized letter. He stated that Applicant took nothing with her the day she resigned, leaving even her personal items on her desk. He stated that she "worked very hard on her assignment as property custodian." He attested that he did not see "her throw any files into a burn bag on that day." (AE C)

Another federal employee and co-worker provided a notarized statement averring that she worked in the same unit as Applicant at the time of Applicant's termination. She never witnessed her "discard any classified documents or items of record nor did I ever witness her do anything that was in violation of her security clearance." Applicant's co-worker also stated, "to my knowledge, [Applicant] provided all documents or records

regarding the Unit's property and location of property to my supervisor electronically and in hard copy form (when my supervisor's signature was required); and after signage, she would file the hard copy forms." (AE C)

Applicant's credit bureau reports from 2006 to 2011 show that Applicant has had a solid financial history with few delinquent accounts. Most accounts are listed as "Pays as Agreed." However, since she resigned in March 2010, the six accounts listed in the SOR have become delinquent. Applicant sought help in resolving her delinquencies. In 2011, she and her husband attended financial counseling that taught them how to handle their bills, develop a budget, and minimize expenses. (GE 5-8; Tr. 62-63)

The SOR lists six debts, totaling \$5,926. The first four SOR debts (allegations 1.a through 1.d) amount to approximately \$3,000. In each case, Applicant has closed the account in order to stop the accrual of interest. She also contacted the creditor and established payment plans for each account, and provided documentation showing her payments of \$20 to \$25 per month for each creditor. As to allegation 1.f, Applicant explained in her Answer to the SOR that she had a dispute with the creditor regarding the debt, which related to a returned leased vehicle. When she returned the vehicle, the balance was zero, and the dealer informed her that adverse information would not appear on her credit report. Applicant provided documentation showing that she has paid the \$397 debt in full. (AE F, G, I, J; Tr. 57-65)

The largest SOR debt (allegation 1.e) represents a past-due mortgage payment of \$2,495. Applicant and her husband obtained a Special Forbearance Agreement in July 2009, under which their interest rate and monthly payment were reduced. She provided the lender's record of her payment history with her Answer to the SOR. She provided documentation from the lender dated March 2011 which informed her that she had completed the payments under the agreement, and that she was current on her home loan. Applicant also applied in July 2011 for a loan modification and her request is under review. (AE F, G, I; Tr. 57-65)

The Government alleges that Applicant failed to disclose her delinquent debts when she completed three security clearance applications in 2006, 2007, and 2010. However, her credit reports for 2006, 2007, and 2010 show that none of the six debts were delinquent in 2006 or 2007 (allegations 2.b and 2.c). The 2010 credit report shows that the status of four of the SOR debts at that time was "Pays as Agreed." (GE 1-3 and 5-8; Tr. 65-66)

Allegation 1.e is Applicant's mortgage loan. The July 2010 credit report shows that she had one payment 120 days late at the time she completed her July 2010 application. Applicant should have answered "Yes" to the question that asked if she was currently 90 days past due. But she correctly answered "No" to the question that asked if she was 180 days past due. Applicant testified that at the time she completed all of her applications, she answered honestly, believing that she was not significantly past due on any debt. Applicant was asked to update her security application in 2009. In her

Answer, she provided the financial portion of the application, which was signed and dated on April 22, 2009.³ In that application, Applicant answered “Yes” to question 26(m) that asked if she had been 180 days delinquent on any debt within the previous 180 days. She listed her mortgage loan, indicated the loan value of \$360,000, and explained that it was “currently under modification.” (GE 1-3, 5-8; Tr. 65-66)

Applicant provided ten character reference letters, with several from three different federal agencies where Applicant has worked. A federal employee and co-worker who knew her at the federal agency where she was terminated describes her as “having a meticulous work ethic.” She noted that Applicant “single-handedly managed all property for the entire office and worked congruently and extremely well with division personnel...” She was thorough and had great rapport with agency personnel on all levels. Another federal employee and co-worker found her to work well both as a team member and as a team leader. Another describes her as displaying a high level of maturity, and taking painstaking efforts to meet critical timelines and trouble-shoot difficult problems. Applicant participates in her church, and volunteers in her community. She serves on the Board of Elections and working at voting sites during state and national elections. She was recognized for outstanding volunteer service by a non-profit organization in 2006, and by several local schools between 1988 and 2000. (AE C, D, E)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁴ Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

³ Among several documents submitted with her Answer, Applicant provided this partial security clearance application. It was included in a document with a cover sheet titled, “E-QIP file in 2009. Copy E-QIP Section 26—Financial Record.” She provided the same cover sheet in Exhibit H at the hearing, but mistakenly failed to attach Section 26 of the security clearance application that she had attached to it in her Answer packet. (See Answer; AE H)

⁴ Directive §6.3.

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the Applicant to refute, extenuate, or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁷

Analysis

Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to financial considerations:

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 over-extended 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.

Applicant accrued six delinquent debts in the year and a half since she left her employment with a defense contractor. The debts total \$5,926. The record supports application of disqualifying condition AG ¶19 (a): *inability or unwillingness to satisfy debts*.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

The Financial Considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

(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.

Six of Applicant's accounts became delinquent in the past year and a half. Her inability to pay these debts timely stemmed chiefly from her resignation from her position when her performance was questioned. Applicant's decision to resign was her own, and the ensuing delinquencies cannot be ascribed to conditions beyond her control.

However, Applicant has been making efforts to resolve her financial situation. She and her husband have attended financial counseling that taught them about minimizing expenses, handling debts, and budgeting. She has handled the situation in a responsible fashion: contacting each creditor, closing past-due accounts to stop interest accrual, and making payments on the payment plans she established for four debts. She has paid a fifth debt in full. The last debt is her largest – approximately \$2,500 for a past-due payment on her mortgage loan. She has been working with her mortgage lender. She and her husband were able to obtain a forbearance arrangement, and she provided the lender's record of her payments since 2009. Her 2011 credit report shows that she is now current on the loan. Applicant has made consistent good-faith efforts to meet her financial obligations, and her debts are under control. AG ¶¶ 20(c) and (d) apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern about 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.

The Guideline E allegations implicate the following disqualifying condition under AG ¶ 16:

(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; and

(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 that the person may not properly safeguard protected information.

The Government alleges that Applicant deliberately failed to disclose her true financial status when she completed security clearance applications in 2006, 2007, and 2010. Falsification of a security clearance application implicates AG ¶ 16(a); however, application of this disqualifying condition requires a deliberate intent to conceal. Here, Applicant did not intentionally hide relevant information from the Government.

Applicant's credible testimony that she believed she was answering the financial questions honestly is supported by the evidence. In 2006 and 2007, she was not past due on the debts listed in the SOR, and her "No" answers were accurate. In 2010, she believed that none of her debts were 180 days or more past due, and again, she was correct. At that time, she was 120 days past due on one mortgage payment, and should have answered "Yes" to one question: whether she was 90 days past due on any debt. I find that this one error stemmed from mistake rather than intentional falsification. Moreover, when Applicant completed an additional application in 2009, she reported that she was 180 days past due on the mortgage payment. Her disclosure in 2009 shows that when she knew a debt was delinquent, she reported it. Moreover, her disclosure of her job termination on her 2010 security clearance application demonstrates that she honestly provided negative information, as well as a highly detailed account of the facts. I conclude that Applicant did not intentionally falsify her security clearance applications, and AG ¶ 16 (a) does not apply.

AG ¶16 (d) is implicated by Applicant's alleged unauthorized disposal of government documents.

The following mitigating conditions under AG ¶ 17 are relevant:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

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

While working for a defense contractor at a federal agency in 2010, Applicant worked on several projects including one involving inventory of company property. The property items, and the reports that she created to inventory them, were not classified or sensitive. It is alleged that she deliberately and improperly placed her work in a burn bag to be destroyed; if true, that would not be minor misconduct. However, given the scant evidence of Applicant's wrongdoing, and Applicant's long history of high-level performance for the federal government, this situation was unique, unlikely to recur, and does not cast doubt on her current trustworthiness or good judgment. AG ¶ 17(c) applies.

The allegation that Applicant improperly placed government documents in a burn bag to be destroyed is based on a JPAS entry by Applicant's FSO. Her entry stems from a comment allegedly made by Applicant, which was overheard by an unknown party. That person, or another unknown party, passed it on to the FSO, who worked at another location and apparently did not hear the comment personally. The FSO admits in her entry that she made an inference, based on the overheard comment, that Applicant wished to prevent future use of her work product. No evidence was offered as to the identity of the co-worker(s). No corroborating statements from them were presented. The FSO did not testify or submit a statement that would explain whether she had any other basis for her entry. The FSO also stated that government documents related to Applicant's project were found in the burn bag. Seven other employees had access to the same burn bag. No evidence was provided to show that Applicant, rather than any of the other employees, placed the documents in it. However, Applicant provided evidence from a co-worker who was present on that day. In his notarized statement, he states that he did not see Applicant place any material in the burn bag on the day she left. The information on which allegation 2.a is based is unsubstantiated and AG ¶17 (f) applies.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant has made a good-faith effort to manage her finances, and did not intentionally misrepresent her financial situation. Based on the credible testimony of Applicant and her witnesses, and the lack of substantiated evidence showing otherwise, I conclude that she did not improperly handle government documents. It is unlikely that Applicant would jeopardize her professional career and her clearance because of one allegation of poor performance. Applicant's numerous letters attesting to two decades of highly competent work performance at numerous federal agencies, her long record of recognized volunteer work in the community, and her strong character and integrity, all support a finding that she is reliable and trustworthy.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns raised by the cited adjudicative guidelines.

Formal Findings

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a – 1.f:	For Applicant
Paragraph 2, Guideline E	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge