



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



In the matter of:)
)
) ISCR Case No.11-02414
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

05/22/2012

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline E (Personal Conduct), but failed to mitigate the security concerns under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On July 2, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. DOHA took that action under Executive Order (EO) 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 on September 1, 2006.

On September 6, 2011, Applicant answered the SOR and requested a hearing. The case was initially assigned to another administrative judge on January 12, 2012, and was reassigned to me on February 27, 2012. DOHA issued a notice of hearing on March 20, 2012, and the hearing was convened as scheduled on March 29, 2012. At

the hearing, Department Counsel offered Government Exhibits (GE) 1 through 6 that were admitted into evidence without objection. Department Counsel's list of exhibits was marked as Hearing Exhibit (HE) 1. Applicant testified and offered Applicant Exhibits (AE) A through T that were admitted into evidence without objection. The record was left open until April 19, 2012, for Applicant to submit additional matters. She timely submitted additional documents that were marked as AE U through BB and admitted into evidence without objection. Department Counsel's memorandum indicating she had no objections to Applicant's post-hearing submissions was marked as HE 2. DOHA received the hearing transcript (Tr.) on April 10, 2012.

Procedural Issues

Under Subparagraph E3.1.8 of the Directive, an applicant shall be notified at least 15 days in advance of the time and place of the hearing. In this case, Applicant did not receive the required notice. However, she discussed the proposed hearing date with Department Counsel before the Notice of Hearing was issued and requested that the hearing be held as soon as possible. At the hearing, Applicant indicated that she was ready to proceed and affirmatively waived the 15-day notice requirement.¹

Findings of Fact

Applicant is a 51-year-old merchant marine seaman who works periodically for a defense contractor. She has worked for that contractor since October 2009. She graduated from high school in 1979 and earned an associate's degree in nursing in 2005. In the past, she has been employed as a nurse. She is married and has been divorced twice. Her first marriage was from September 1978 to October 1987 and her second was from June 1996 to November 2007. She has three children, ages 26, 30, and 31. This is the first time that she has applied for a security clearance.²

Under Guideline F, the SOR alleged that Applicant filed bankruptcy on three occasions (SOR ¶¶ 1.a – 1.c) and had 23 delinquent debts (SOR ¶¶ 1.d – 1.z) totaling \$116,611. In her Answer, Applicant admitted the three bankruptcy allegations, admitted and denied some of the debt allegations, and failed to address five debt allegations (SOR ¶¶ 1.m, 1.p, 1.w, 1.x, and 1.z). At the hearings, she was asked to admit or deny the five debt allegations that she failed to address. Her admission or denial of each debt allegation is reflected in the table below. Under Guideline E, the SOR alleged that Applicant falsified her security clearance application (SCA) dated October 24, 2009, by answering "No" to four questions about her financial record (SOR ¶¶ 2.a – 2.d). In her Answer, she did not address the four falsification allegations, but denied each of them at the hearing.³

¹ Tr. 24-25.

² Tr. 7-9, 56-60; GE 1.

³ Tr. 14-24; Applicant's Answer to the SOR.

Applicant filed Chapter 13 bankruptcy in May 1998. This bankruptcy was dismissed in January 1999. She again filed Chapter 13 bankruptcy in January 1999, which was dismissed in April 2001. In April 2002, she filed Chapter 7 bankruptcy and received a discharge of her debts that same year. At the hearing, she testified that she did not remember the amount of the debts that were discharged in her Chapter 7 bankruptcy. She stated that she filed bankruptcy because she and her ex-husband had a mobile home that was voluntarily repossessed and she filed to make him solely responsible for that debt. She noted that, before the repossession, she was giving him the money to make the mortgage payments and he failed to make four monthly payments.⁴

Applicant attributed most of her current financial problems to her second ex-husband. Her and her ex-husband's names were very similar. Her nickname was the same as his first name. They had the same middle initial and, at that time, the same last name. While they were married, the name she regularly used was identical to his name. The similarity in their names apparently created confusion and some of his debts were listed as hers. Most notably, the child support arrearages in the amount of \$95,868 in SOR ¶ 1.w is her ex-husband's debt. She initially filed for divorce from her second husband in 2001 or 2002 and believed she was divorced. In about 2006, she learned that she was not divorced. She filed again and obtained a divorce in 2007. She indicated that, when they were living together and again in about 2007, she learned that he had opened accounts using her social security number. She said that he also used her daughter's social security number to open accounts. She filed fraud alerts with the credit reporting agencies and currently pays for a credit monitoring service to protect against future fraud.⁵

As a merchant marine seaman, Applicant deploys regularly on ships. She normally works in four-month intervals. She files for, and collects, unemployment compensation for the months she is unemployed between deployments. Last year, she was unemployed for nine months because she did not have a security clearance, and she also had surgery during that period of unemployment.⁶

During an interview with an Office of Personnel Management (OPM) investigator in October 2010, Applicant indicated that she was unaware of most of the delinquent debts that were then listed on her credit report. At that time, she stated that she planned to inquire into the debts and either dispute them or pay them.⁷

Applicant's alleged debts are addressed in the table below.

⁴ Tr. 72-76; GE 2, 5, 6; AE A, L.

⁵ Tr. 28-29, 50-56, 63-64, 67-68, 95-96, 109-112, 114-115, 132-133; GE 3; AE H, J. In AE H, Applicant is listed as having lived in a state that she claims she never resided.

⁶ Tr. 77, 123-133; GE 3.

⁷ GE 3.

SOR/Debt/Answer	Amount	Status	Evidence
1.d – medical center judgment – admitted	\$4,050	This judgment was filed in October 2004. The medical care was provided to Applicant’s daughter. Applicant thought this debt was discharged in her 2002 bankruptcy. She recently talked to the creditor about a payment arrangement, but has not made any payments. This debt is unresolved and the balance has increased to over \$6,000.	Tr. 61-65, 76-78, 139-140; GE 2, 5, 6; AE A.
1.e – State X judgment – denied	\$4,650	Applicant stated she never lived in State X, but her ex-husband had lived there. She believes this is a judgment against her ex-husband for child support arrearages. She has disputed this debt. Of note, the Government provided no evidence establishing this debt.	Tr. 62-64, 78-79, 106; GE1-6; AE W, X.
1.f – collection account – admitted	\$352	This telephone bill was placed for collection in March 2008. Applicant made payments of \$185 in July 2011 and \$191 on March, 28, 2012. She claimed these payments satisfied this debt, but provided no proof confirming its resolution.	Tr. 79-85; GE 4, 5, 6; AE I, AA.
1.g & 1.h – collection accounts – admitted	\$261 & \$259	These medical debts were placed for collection in 2009 and 2010. Applicant claimed she reached a settlement agreement with the creditor for these debts as well as those in SOR ¶¶ 1.o and 1.p, below, and paid all of them on March 26, 2012. She provided no proof of the settlement agreement.	Tr. 85-89; GE 2, 4, 6; AE F, BB.
1.i – collection account – admitted	\$120	This utility bill was placed for collection in January 2007. Applicant paid this bill in September 2011.	Tr. 89-91; GE 2, 4, 6; AE F, U, AA.

1.j & 1.k – collection accounts – denied	\$316 & \$169	These telephone bills were placed for collection in 2008. Applicant initially denied these debts because she never had an account with this company. She later learned these were her daughter's bills and assumed responsibility for them. She settled these accounts for \$242 and paid them in 2011.	Tr. 91-94; GE 5, 6; AE C, E, Z.
1.l – collection account – admitted	\$92	This book club debt was placed for collection in 2009. Applicant paid this debt in June 2011.	Tr. 94-95; GE 2, 5, 6.
1.m – collection account – denied	\$598	This debt is from a bank located in a state where Applicant never lived. It was placed for collection in 2009. She believes this is her ex-husband's debt and provided documentation disputing it.	Tr. 94-98; GE 2, 5, 6; AE W, X.
1.n – collection account – denied	\$439	This debt is from a communications company in a state where Applicant never lived. It was placed for collection in 2009. She believes this is her ex-husband's debt and provided documentation disputing it.	Tr. 99; GE 5, 6; AE J, W, X.
1.o & 1.p – collection accounts – admitted	\$350 & \$495	These medical debts were placed for collection in 2009 and 2010. Applicant claimed she reached a settlement agreement with the creditor for these debts as well as those in SOR ¶¶ 1.g and 1.h, above, and paid all of them on March 26, 2012. She provided no proof of the settlement agreement.	Tr. 86-89, 99; GE 5, 6; AE F.
1.q – collection account – denied	\$314	This debt was placed for collection in 2005. Applicant called the creditor who advised her it held no account with her social security number. She believes this is her ex-husband's debt and provided documentation disputing it.	Tr. 99-100; GE 5, 6; AE K, X.

1.r – collection account – denied	\$120	This debt was placed for collection in 2008. Applicant stated that she never had an account with this company. She believes this debt was her ex-husband's and provided documentation disputing it.	Tr. 100-101; GE 5, 6; AE W, Y.
1.s – collection account – denied	\$3,649	This medical debt was placed for collection in 2004. Applicant believes this debt was her ex-husband's. She provided no documentation disputing this debt.	Tr. 100-101; GE 2, 5, 6.
1.t – collection account – denied	\$300	This debt was placed for collection in 2006. At the hearing, Applicant indicated she would take responsibility for this debt and pay it. She provided no proof of payments.	Tr. 101-103; GE 5, 6.
1.u – collection account – admitted	\$904	This credit card debt was placed for collection in 2010. Applicant provided a letter from the collection agency showing this debt had a zero balance.	Tr. 103-105; GE 2, 5, 6; AE G, Z.
1.v – collection account – admitted	\$378	This television service bill was placed for collection in 2009. Applicant paid this debt on March 28, 2012.	Tr. 105; GE 5, 6; AE N.
1.w – state collection account – denied	\$95,868	This is a child support debt that one state is collecting on behalf of another. As discussed above, this is her ex-husband's debt and provided documentation disputing it.	Tr. 105-112; GE 5, 6; AE O, W, Y.
1.x – collection account – denied	\$243	This school debt was placed for collection in 2009. In responding to interrogatories, she indicated that she would pay this debt. At the hearing, she stated she never took any online classes from this school. She believes this is her ex-husband's debt and provided documentation disputing it.	Tr. 113-116; GE 2, 5, 6; AE W, Y.
1.y – collection account – admitted	\$1,802	This fitness center debt was placed for collection in 2008. Soon after joining the fitness center, Applicant claims she canceled this	Tr. 116-121; GE 5, 6; AE D, V, W, Y.

		membership because she was reassigned out of the area and paid a \$50 cancellation fee. She has disputed this debt claiming the contract was cancelled.	
1.z – collection account – denied	\$882	This telephone bill was placed for collection in 2010. Applicant provided a letter from the collection agency showing this debt had a zero balance.	Tr. 121-122; GE 2-6; AE C.

Applicant testified openly and honestly at the hearing. She has not received any financial counseling. She indicated that she has about \$2,000 in the bank. She estimated that she earned \$25,000 during the four months she worked in 2011 and usually earns about \$50,000 per year. Her husband is also a merchant marine seaman, and they deploy together. She provided a budget for the first three months of 2012. It reflected that, in January 2012, her total income was \$5,031 and her total expenditures were \$3,122, which left her a net month remainder of \$1,908. However, her income and expenses fluctuate. She indicated that she and her husband were meeting their current expenses. Her bills are electronically deducted from her account to ensure payments are made while she is deployed.⁸

On October 24, 2009, Applicant submitted a SCA in which she responded “No” to all of the financial questions. Specifically, she responded “No” to these four questions:

a. Section 26e that asked if she had a judgment entered against her in the past seven years;

b. Section 26g that asked if she had bills or debts turned over to a collection agency in the past seven years;

c. Section 26m that asked if she had been over 180 days delinquent on any debts in the last seven years, and

d. Section 26n that asked if she was currently over 90 days delinquent on any debts.

At the hearing, she testified that she was not aware of the judgment in SOR ¶ 1.d and the judgment in SOR ¶ 1.e was not her debt. However, she testified that, when she filled out the SCA, she knew she had bills that were turned over to collection agencies and knew that she had delinquent debts that met the other reporting requirements. She could not explain why she answered “no” to those questions. She indicated that she was not trying to lie or hide any information, but may have misinterpreted the questions.⁹

⁸ Tr. 122-133; AE R, S.

⁹ Tr. 60-72; GE 1.

Applicant did not submit any character reference letters or performance evaluations.

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 that 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 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, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant received a bankruptcy discharge in 2002. Not long thereafter, she began incurring delinquent debts that she was unable or unwilling to satisfy for several years. This evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations mitigating conditions under AG ¶ 20 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;
- (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 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.

In 1998, Applicant filed Chapter 13 bankruptcy, but that proceeding was later dismissed. In January 1999, she again filed Chapter 13 bankruptcy, which was also dismissed. In 2002, she filed Chapter 7 bankruptcy and received a discharge of her debts that year. As early as 2004, she was again encountering financial difficulties. A judgment was entered against her in 2004 that remains unresolved. She has a long history of financial problems that are ongoing. Based on the evidence presented, I cannot conclude that her financial problems were long ago, were infrequent, or occurred under circumstances that are unlikely to recur. Her financial problems continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributes many of the delinquent debts to her ex-husband. The similarity between her and her ex-husband's name created confusion. She also claimed he used her social security number without her authorization to open accounts. In 2011, she was unemployed for about nine months because she did not have a security clearance. Her ex-husband's debts that were attributed to her and her unemployment were conditions beyond her control. However, she admitted that she was responsible for eleven of the alleged delinquent debts that predated her unemployment in 2011. AG ¶ 20(b) does not apply to the debts that she admitted.

Applicant has not received financial counseling. She has paid a number of the delinquent debts (SOR ¶¶ 1.f, 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, 1.o, 1.p and 1.v). However, she paid six of those debts (SOR ¶¶ 1.f, 1.g, 1.h, 1.o, 1.p, and 1.v) only days before the hearing even though she knew about most of them since her OPM interview in October 2010. Because of that delay, she failed to establish that she acted in "good-faith" in repaying or resolving those debts. Additionally, she presented no meaningful plans for resolving the debts in SOR ¶ 1.d and 1.t. AG ¶¶ 20(c) and 20(d) partially apply.

Applicant claims that a number of the delinquent debts were her ex-husband's. She has disputed those debts through the credit report agencies. Her basis for disputing those debts is reasonable and legitimate. AG ¶ 20(e) applies to the disputed debts.

Guideline E, Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15, as follows:

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 conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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.

In her SCA dated October 24, 2009, Applicant did not disclose that she had a judgment entered against her, had debts turned over to collection agencies, and had delinquent debts meeting other reporting requirements. At the hearing, she stated that she thought the judgment had been discharged in the bankruptcy. She also indicated that, when she submitted the SCA, she knew she had debts that were turned over to collection agencies and that she had debts that met the reporting requirements. She was perplexed that she did not report the debts as required and could not explain her responses to the pertinent questions. She denied that she lied or was attempting to hide any information in responding to those questions. I found her testimony credible. It was apparent that she misinterpreted the questions. Such a misunderstanding does not equate to intentional falsifications. AG ¶ 16(a) is not applicable. Personal Conduct security concerns are concluded for 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 the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional

comment. I considered Applicant's work record and her efforts to resolve her delinquent debts. She has a long history of financial problems. Some of her delinquent debts remain unresolved, and she presented no realistic plan for resolving them. Questions exist whether financial problems will recur. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns under Guideline E, but has not mitigated the security concerns under Guideline F.

Formal Findings

Formal findings 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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.h:	Against Applicant
Subparagraphs 1.i-1.n:	For Applicant
Subparagraphs 1.o-1.p:	Against Applicant
Subparagraphs 1.q-1.s:	For Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraph 1.v:	Against Applicant
Subparagraphs 1.w-1.z:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge