



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



In the matter of:)
)
 REDACTED) ISCR Case No. 11-02488
)
 Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

03/28/2012

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Financial Considerations and Drug Involvement concerns, but failed to mitigate the Personal Conduct concern. She has had numerous traffic violations over the past 13 years, principally involving speeding and driving with a suspended or revoked license. In spite of twice being arrested for driving on a suspended license and serving time in jail, she continues to violate traffic laws. Her last violation occurred a year ago and occurred after she completed a driver's safety education course. Clearance is denied.

Statement of the Case

On August 30, 2010, Applicant submitted her security clearance application (SCA). On August 3, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), notifying Applicant that it was unable to find that it is clearly consistent with the national interest to grant her access to classified information due to the concerns under Guidelines F (Financial Considerations), H (Drug

Involvement), and E (Personal Conduct).¹ On August 22, 2011, Applicant submitted her Answer and requested a hearing.

On September 30, 2011, Department Counsel indicated the Government was ready to proceed. After coordinating with the parties, I scheduled the hearing for November 15, 2011.² At hearing, Department Counsel offered Government Exhibits (GE) 1 through 10, which were admitted into evidence without objection. Applicant appeared at the hearing, testified, and submitted Applicant's Exhibits (AE) A through Q. These exhibits were admitted without objection. I granted Applicant's request to keep the record open to provide her additional time to submit matters for my consideration. She timely submitted 12 documents, which were collectively marked as AE R and admitted without objection. The transcript (Tr.) was received on November 28, 2011.

Findings of Fact

Applicant is a 32-year-old senior manager, working for a federal contractor. She is a single mother with an eight year old child. She has overcome difficult situations, some of her own making and some outside of her control, to reach her current station in life. She is heavily involved in charitable work and has received considerable accolades for her endeavors on behalf of the less fortunate. She has been with her current employer for a little over two years and has received merit-based raises each year. Her coworkers and colleagues speak glowingly about her work performance and recommend her for a security clearance.³

Applicant's past financial problems were due to the lack of child support and significant medical issues. She started resolving her financial problems in 2009 when she began her current job. She has slashed her living expenses and secured child support. These actions, in conjunction with her well-paying job, have allowed her to satisfy her past delinquent debts or bring the accounts current.

The SOR alleges 15 debts totaling \$8,280.50. Applicant has satisfied 12 of these debts, or \$5,848.50 of the total amount previously outstanding. She has legitimate claims against the remaining three debts totaling \$2,432, which she is disputing. She lives within her means, does not have credit cards, and has not accumulated any further

¹ DOHA took this action acted 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 by the Department of Defense on September 1, 2006.

² Applicant received the Notice of Hearing (NOH) on November 3, 2011, but agreed to schedule the hearing a month before. At hearing, she waived the formal 15-day notice requirement and indicated she was prepared to proceed. Tr. at 7-8; E-mail from Department Counsel, dated October 13, 2011.

³ Tr. at 51-59; Answer; GE 1; GE 2; AE J; AE K; AE P; AE Q, at 18; AE R.1; AE R.2.

debt. She disclosed her financial problems on her SCA and discussed them with government investigators during her background interviews.⁴ (SOR ¶¶ 1.a – 1.o).

Applicant also self-reported that she experimented with marijuana on five separate occasions, with her last use occurring in approximately 2007. She discussed her past marijuana use with government investigators and has indicated on several occasions her intent not to use illegal drugs in the future. She is focused on creating a good life for her daughter and does not associate with those involved with illegal drugs.⁵ (SOR ¶ 2.a).

Applicant has had numerous traffic violations over the past 13 years. In 1999, she was driving a car on a suspended driver's license and fraudulently claimed to police to be her sister.⁶ (SOR ¶ 3.a). She continued to drive with a suspended license and was arrested in January and July 2002. She was convicted of both offenses and served time in jail for both convictions.⁷ (SOR ¶¶ 3.b – 3.c). Applicant was arrested in August 2002 for violating the terms of her probation, and in December 2002 for reckless driving (85 mph in a 55 mph zone). She was convicted of the reckless driving charge and received a suspended jail sentence.⁸ (SOR ¶¶ 3.b – 3.c). Despite these legal consequences, Applicant continues to violate traffic laws, including speeding and driving on a suspended or revoked license. At hearing, she explained that her recent citations for driving on a suspended or revoked license were a result of expired tags or other easily remedied issues. Once she resolved those issues, the citations were either dismissed or not prosecuted. In April 2010, she completed a Department of Motor Vehicles (DMV) mandated driver's safety education course. Yet, in October 2010, she was again cited for driving on a revoked or suspended license.⁹ (SOR ¶¶ 3.f – 3.i). During cross-examination, Applicant admitted to committing other serious traffic violations from 2001 to March 2011. Her March 2011 violation resulted in a conviction and fine.¹⁰ Applicant did not submit her current driving record or other documentation that her driving privileges have been reinstated.

⁴ Tr. at 61-154, 196-197; Answer; GE 1; GE 2; AE A – AE I; AE K; AE P; AE Q at 18; AE R.3 – R.10.

⁵ Tr. at 155-160; Answer; GE 1; GE 2; AE R.11.

⁶ Tr. at 160-162; Answer; GE 2, Personal Conduct Interrogatory, Q. 2 and Subject Interview (SI), dated 1/25/11; GE 3.

⁷ Tr. at 162-165; Answer; GE 1; GE 2, 1/3/10 and 1/25/11 SI.

⁸ Tr. at 165-174; Answer; GE 3.

⁹ Tr. at 174-178; Answer; GE 3; AE R.12. In light of Applicant's testimony, I find that she committed the driving with suspended or revoked license offenses alleged in SOR ¶¶ 3.f – 3.i.

¹⁰ Tr. at 182-188. I have only considered these matters in assessing Applicant's case in mitigation. See *generally* ISCR Case No. 10-00922 at 3 (App. Bd. Nov. 3, 2011) ("It is appropriate for a Judge to consider conduct and matters not alleged in the SOR for such limited purposes as evaluating a claim of extenuation, mitigation or changed circumstances, and when weighing relevant and material information under the whole person concept.").

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 ¶ E3.1.15.¹¹ 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."¹²

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.

¹¹ 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.").

¹² 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 delinquent debt over a lengthy period of time directly implicates this concern and establishes the following disqualifying conditions under AG ¶ 19:

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

An applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. I have considered all the mitigating conditions and find that the following were established by the evidence:

- (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.

Applicant's past financial problems were directly related to the lack of child support and significant medical issues. After starting her current job in 2009, she set on a course to resolve her debts to establish a better life for herself and her child. She has resolved the vast majority of her past debts by slashing living expenses and using the money saved, as well as the income from her new job, to satisfy her debts. AG ¶¶ 20(a) through 20(d) apply. Applicant mitigated the financial considerations concern.

Guideline H, Drug Involvement

The security concern regarding illegal drug involvement is set forth at AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Applicant's past, limited use of marijuana raises the drug involvement concern and establishes AG ¶ 25(a), to wit: "any drug abuse."

Applicant's past marijuana use does not end the analysis, because AG ¶ 26 sets forth a number of mitigating conditions that could mitigate the drug involvement concern. The following two mitigating conditions warrant discussion:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant established both mitigating conditions. Her last use of marijuana was in 2007. She demonstrated that she will not use marijuana or other illegal drugs in the future. She submitted a signed statement declaring that she understands any future drug use will result in automatic revocation of her clearance. She stated at hearing and throughout the security clearance investigation that she has no intent to use marijuana in the future. She has been honest throughout, including disclosing her past drug use and other adverse information on her SCA. I found her credible. She does not associate with those who use drugs and is focused on providing a good life for her daughter. AG ¶¶ 26(a) and (b) apply. Applicant's past illegal drug involvement no longer raises 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 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.

Applicant's long track record of serious traffic violations directly implicates the personal conduct concern, because it raises questions about her judgment.¹³ It also establishes the following disqualifying condition under AG ¶ 16:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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 safeguard protected information.

Applicant may mitigate the security concerns raised by her conduct by establishing one or more of the mitigating conditions listed under AG ¶ 17. I have considered all the mitigating conditions and only the following is potentially applicable:

(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.

Applicant's long track record of serious traffic violations is not minor. She went to jail on two separate occasions for driving on a suspended license and continues to routinely disregard traffic laws. She received two traffic citations following the completion of her DMV-mandated driver's safety education course in April 2010. The most recent violation occurred just a year ago. Security clearance adjudications are "not an exact science, but rather predicative judgments about a person's security suitability," where an applicant's past history is the best indicator of future conduct.¹⁴ Applicant's

¹³ See e.g. ISCR Case No. 10-09281 at 4 (App. Bd. March 5, 2012) ("the offenses of driving on a suspended license . . . are properly the subject of separate SOR allegations" under Guideline E).

¹⁴ ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) [citing to *Department of the Navy v. Egan*, 484 U.S. 518, 528-529 (1988)].

past history leaves me with concerns that this type of misconduct will recur. Applicant failed to mitigate the personal conduct concern.¹⁵

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).¹⁶ I gave due consideration to Applicant's charitable endeavors, medical issues, and significant strides she has made in resolving her financial situation. I also took into account Applicant's honesty throughout the security clearance process, including admitting at hearing to driving offenses that were not alleged. However, considering Applicant's lengthy record, including twice going to jail for driving on a suspended license, and her continuing refusal to comply with traffic laws, doubt about her good judgment remains. As noted above, *any* doubts concerning an applicant must be resolved in favor of national security. Accordingly, I find that the favorable whole-person factors present in this case do not outweigh the security concern raised by Applicant's personal conduct. 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 SOR allegations:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

 Subparagraphs 1.a – 1.o: For Applicant

Paragraph 2, Guideline H (Drug Involvement): FOR APPLICANT

 Subparagraphs 2.a: For Applicant

Paragraph 3, Guideline E (Personal Conduct): AGAINST APPLICANT

 Subparagraphs 3.a – 3.i: Against Applicant

¹⁵ *Id.* (upholding denial where applicant had a seven year track record of traffic violations).

¹⁶ (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.

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 denied.

Francisco Mendez
Administrative Judge