



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



In the matter of:)	
)	
)	ISCR Case No. 11-04499
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

01/30/2013

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on December 7, 2010. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on May 25, 2012, detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on June 6, 2012, and she answered it. DOD received her answer on June 29, 2012. A hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA) was requested. Department Counsel was prepared to proceed on October 9, 2012. DOHA assigned this case to another administrative judge on October 15, 2012. DOHA reassigned the case to me on October 22, 2012 for workload reasons. DOHA issued a Notice of Hearing on November 26, 2012, and I convened the hearing as scheduled on December 19, 2012. The Government offered exhibits (GE) marked as GE 1 through GE 9, which were received and admitted into evidence without objection. Applicant testified. She did not submit any exhibits. I held the record open until January 3, 2013, for Applicant to submit additional matters if she desired. Applicant chose not to submit any additional evidence. The record closed on January 3, 2013. DOHA received the hearing transcript (Tr.) on January 4, 2013.

Procedural Rulings

Notice

Applicant was not sure of the date she received the hearing notice. I advised Applicant of her right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant agreed to proceed with the hearing as scheduled. (Tr. 8-9)

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.c, 1.e - 1.o, 1.q - 1.t, 1.v - 1.z, 1.bb - 1.ee, and 2.a -2.g of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶¶ 1.d, 1.p, 1.u, 1.aa, and 2.h of the SOR.¹ She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 37 years old, works in food service for a DOD contractor. She began her current employment in December 2010. She has not had any disciplinary problems at her job. Except for two months, she had been unemployed for three years prior to accepting her current position.²

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

²GE 2; Tr. 49.

Applicant graduated from high school in 1994 and has some college credits. Applicant and her husband married in December 2006. They have a three-year-old daughter, and Applicant has a 15-year-old daughter from an earlier relationship.³

Applicant enlisted in the United States Navy in August 1994. In 1996, Applicant was pregnant with her first daughter. She wanted to go home and requested leave. The Navy denied her request. She left her base and was absent without leave (AWOL) for 60 days. She returned to her duty station on her own. She appeared at a Captain's Mast for this conduct. Because she had other problems while in the Navy and wanted to leave, the Navy gave her an 'Under Other Than Honorable Conditions' in February 1997.⁴

From June 1999 until April 2001, Applicant worked as an office clerk in the shipping department of a technical company. The company fired her in April 2001 after she had been late three times. After her second tardy arrival, her supervisor warned her that she would be fired if she was late again. One day when her daughter was sick, she arrived to work two minutes late. At the end of her shift, her supervisor fired her.⁵

In June 2005, Applicant and a neighbor argued and threatened each other. Applicant eventually returned to her house and decided to "let the matter go". Three weeks later, she received a postcard from the police, which requested her to report downtown. She did, and the police arrested her for communicating a threat. Her neighbor failed to appear for the court hearing, and the court dismissed her case.⁶

In October 2005, the police arrested and charged Applicant with simple worthless check because she wrote a check to a grocery store when she did not have sufficient funds in her checking account. She acknowledged writing this check. She paid the check and related charges.⁷

In March 2006, Applicant's husband was involved in an altercation with another female at a fast food place. Applicant drove to the fast food restaurant where she met with her husband and the police. The police advised that a crime had not been committed and told everyone to go home. A few weeks later, after receiving a telephone call about her nephew enticing a riot, Applicant drove to a local movie theater to pick him up. When she arrived, she identified herself to the police. The police arrested her for simple assault for the incident with her husband, based on an arrest warrant. The

³GE 1; GE 4; GE 4; Tr. 17-18.

⁴Applicant's other problems while in the Navy are not identified as an issue in the SOR. Her problems included financial issues and an assault charge. Tr. 40-45.

⁵GE 1; GE 4; GE 5; Tr. 23, 46-47.

⁶GE 4; GE 5; Tr. 24.

⁷Tr. 25-26.

police released her on her own recognizance. She appeared in court within a month, and the court dismissed her case as the complaining witness did not appear for the hearing. Applicant denies assaulting this woman.⁸

In April 2008, Applicant began working for a child services organization. She completed a public trust position application (SF 85P) on April 7, 2008. Because she was working with children, she interpreted the question about assault charges as a request for any arrests for assault charges against children, not any arrests for assault. She did not list her simple assault arrest in 2006. When her first paycheck was three days late, she asked about the check and continued to ask about her check when she did not receive it. Eventually, the appropriate manager prepared an emergency check for her. Her subsequent paychecks were received on time. In June 2008, the employer advised her that it was terminating her for lying on her SF 85P because she did not list the simple assault arrest. Applicant acknowledged this reason for her termination and stated that she believed the incident with her first paycheck was also a factor in her dismissal.⁹

When Applicant completed the SF 85P in April 2008, she did not list her “Under Other Than Honorable Conditions” discharge from the Navy because the discharge had occurred more than 10 years earlier. Staff members at her place of employment, who helped her with the application, told her not to list any incident that occurred more than 10 years earlier. She acknowledged at the hearing that she did not pay careful attention to the questions and her answers when completing her SF 85P. She failed to list her arrests for simple assault, communicating a threat, and simple worthless check. She never met with an Office of Personnel Management (OPM) investigator after she completed the SF 85P.¹⁰

Applicant completed her SF 86 on December 7, 2010. The directions given to her were simply to tell the truth. Following this directive, Applicant listed her arrests, her “Under Other Than Honorable Conditions”, and her debts.¹¹

The SOR lists 31 unpaid debts, the majority of which are medical debts. The medical debts occurred when she was a single mother without health insurance. Applicant denied five of these debts because she either believed the debt had been paid or she did not recognize the debt. Applicant did not provide verification that showed she paid the debts she denied. She has not paid any of the remaining debts, and she does not have a plan of action to resolve these debts. Because most of the debts are no longer on her credit report and are more than seven years old, she believed that she did

⁸GE 4; GE 5; Tr. 25.

⁹GE 4; GE 5; Tr. 26-27.

¹⁰GE 1; Tr. 21-22, 27-29, 31-34, 56-57.

¹¹GE 2; Tr. 21-22, 53-54.

not have to pay them. The 2012 credit reports show four unpaid debts, which are four years or more past due. Her current bills are paid.¹²

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

¹²GE 4 - GE 8; Tr. 18-21, 29-30.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Appellant developed significant financial problems when she was single. She lacked sufficient income to pay her bills, and her lack of medical insurance contributed to the accumulation of unpaid medical bills. The debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f).¹³ Applicant has not provided proof that she paid the five debts she denied. She

¹³In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” See, *e.g.*, ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, *e.g.*, ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, *e.g.*, ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is

acknowledged that she has not paid the remaining debts listed in the SOR, primarily because the debts are old and not listed on her current credit reports. Under state statute of limitations laws,¹⁴ she has the right to challenge any action against her by a creditor to collect these old debts.¹⁵ Applicant has not mitigated the security concerns under Guideline F.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to Personal Conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or

credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

¹⁴The Appeal Board has explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(Internal citation and footnote omitted) ISCR Case No. 02-30301 at 3 (App. Bd. Apr. 20, 2004)(quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

¹⁵The DOHA Appeal Board has held that the statute of limitations is not evidence of mitigation in security clearance cases. Under Guideline F or in the "whole-person" analysis, the Appeal Board has not addressed the issue of rehabilitation of finances as a way to mitigate security concerns when debts are old and legally uncollectible.

similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(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. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and,

(4) evidence of significant misuse of Government or other employer's time or resources.

For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. The Government established that Applicant omitted material facts from her April 2008 SF 85P, when she failed to list her "Under Other Than Honorable Conditions" discharge from the Navy and her three arrests. This information is material to the evaluation of Applicant's trustworthiness and honesty. In her response and at the hearing, she denied that she intentionally falsified her answers on her SF 85P or that she had an intent to hide her past conduct from the Government. When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred.

When Applicant completed the SF 85P in 2008, staff at her office advised her that she did not need to provide any information more than 10 years old. Relying on this advice, she did not list information about her discharge from the Navy. Concerning her failure to list the three arrests, she misinterpreted the information being requested. She thought her employer was seeking information related to crimes against children only.

The Government has not established under AG ¶ 16(a) that Applicant intentionally falsified her SF 85P in April 2008.¹⁶

As a 20-year-old, Applicant's decision to leave her Navy duty station without permission showed poor judgment. This decision, her job termination in 2001 for tardiness, and her three arrests reflect a pattern of rules violation. A security concern is raised under AG ¶ 16(d)(3).

AG ¶ 17 provides conditions that could mitigate security concerns:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Although Applicant decided to leave her Naval duty assignment in 1996 without permission, she decided to return and face the consequences of her decision, which reflected improvement in her judgment. By firing Applicant in 2001 for being late two minutes, her employer required her to give greater priority to her job than the care of her young, and sometimes sick child, or lose her job. Applicant's first responsibility was to her child, personally and legally. She showed good judgment by placing her child first. When she and her neighbor argued in June 2005, Applicant decided to walk away from the situation and "let it go." She again showed good judgment, by walking away from the situation. Her neighbor carried the argument to the police, which led to Applicant's first arrest. The neighbor failed to appear in court, an indication that the neighbor did not intend to pursue this matter. Applicant denied any misconduct in the 2006 incident which resulted in her simple assault arrest. The individual, who claimed that Applicant assaulted her, failed to appear for the court hearing on her claim, which raises questions about the validity of the charges. The court dismissed the charges. Applicant acknowledged that she had problems with her finances in the past, which led to her writing checks when she did not have sufficient funds in the checking account. Her finances are much better. She has not written checks without sufficient funds in a long time. Overall, the evidence of record reflects that Applicant has matured and makes better decisions concerning the issues presented in life. She has mitigated the security concerns about her personal conduct in the past under AG ¶¶ 17(d) and 17(e).

¹⁶Applicant voluntarily provided this information on her SF 86 in December 2010 after being advised to be truthful on her security clearance application. Because she had not met with an OPM investigator or any other DOD official after completing the SF 85P in 2008, she provided the correct information at the first opportunity.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c) the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. When Applicant's financial problems first began, Applicant was a young single mother with limited income and no health insurance. Her finances have improved in recent years, but her past debts remain unresolved. Applicant made poor decisions as a young person. As she matured, Applicant began to improve her decision making. She has remained out of trouble for a number of years. She is married and has two children. As a result, she has focused her attention on providing a stable domestic environment for her family. Her past conduct is not a security concern, but her past debts remain a security concern.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from her finances under Guideline F, while she did mitigate the security concerns about her personal conduct under Guideline E.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.ee:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.g:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge