



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 11-06239
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

12/29/2011

Decision

MASON, Paul J., Administrative Judge:

Eligibility for access to classified information is denied.

Statement of the Case

Applicant signed and certified her Electronic Questionnaire for Investigations Processing (e-QIP, Item 4) on February 24, 2011. She

was interviewed by an investigator from the Office of Personnel Management (OPM) on March 29, 2011. This interview appears in her Interrogatory Answers provided to the Government on July 11, 2011. (Item 5) In her interrogatory answers, Applicant agreed and adopted the investigator's summary of her March

2011 interview, and that it could be used in a security clearance hearing to determine his security suitability. (*Id.*) On September 6, 2011, DOHA issued a Statement of Reasons (SOR, Item 1) detailing security concerns under criminal conduct (Guideline J), financial considerations (Guideline F), and personal conduct

(Guideline E) 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
(AG).

Applicant furnished her answer to the SOR on September 19, 2011. A copy of the Government's File of Relevant Material (F O R M , t h e Government's evidence in support of the allegations of the SOR) was sent to Applicant on November 2, 2011. She received the

FORM on November 8, 2011. In an attachment to the FORM, Applicant was advised she could object to the information in the FORM or submit additional information in explanation or extenuation. She provided additional information in her response to the FORM, dated November 22, 2011, which is now a part of the record for my

review. The case was assigned to me on December 8, 2011.

Findings of Fact

The SOR contains one factual allegation under the criminal conduct (SOR ¶ 1.a) and financial guideline (SOR ¶ 2.a). The first factual allegation under the personal conduct guideline is the

alleged omission from Appellant's e-QIP on February 24, 2001. (SOR ¶ 2.a) The second allegation under the personal conduct is that Applicant's criminal conduct (SOR ¶ 1.a) also represents personal conduct. (SOR ¶ 2.b) Applicant admitted all three allegations..

Applicant is 54 years old and divorced. She has no children. She has been employed by a defense contractor since June 1992. She is currently a senior administrator. She seeks a secret security clearance.

Criminal Conduct

According to her e-QIP, in early 2001, Applicant

was dating a male who verbally and physically abused her on a periodic basis. After promising not to abuse her again, they purchased a house together and had been living together for nine months when her boyfriend instigated a fight in December 2001. In a effort to defend herself, Applicant, 45 years old at the time, shot him.

On December 13, 2001, Applicant returned to her house (that she had purchased with her boyfriend) about 9 P.M. from her part-time job. Shortly after her arrival, her boyfriend began accusing her of having an affair and demanded she leave immediately. He struck her several times and ripped off some of her clothing. She became

fearful for her life and tried to retrieve some clothes so she could live with her mother for a while. Her boyfriend was about to strike her again when she remembered there was a handgun in the closet. She picked it up, pointed it at her boyfriend, and shot twice as he was fleeing down the hallway and out of the house. One of the bullets hit him in his

buttock. Applicant remained in the house and called the police. She was arrested for aggravated assault.

After a jury trial in August 2002, Applicant was convicted of aggravated assault and placed on probation for 10 years. She was ordered to pay a fine of \$500, restitution of \$1500,

perform 200 hours of community service, and complete 12 weeks of anger management.

Applicant provided documentation verifying her completion of the anger management course in December 2002. (Response to FORM) She provided documentation proving that on April 19, 2011, she

was officially discharged from probation, having completed all conditions of her sentence.
(Response to FORM)

Applicant's aggravated assault conviction is the only entry on her criminal record. Applicant does not believe she is a violent person. She had never fired a gun of any kind before or since the

incident on December 13, 2001. She is remorseful for her actions.

F i n a n c i a l Considerations

On March 19, 2011, Applicant told an investigator from OPM that after reviewing the information describing the account in ¶ 2.a of the SOR, that the credit card

account became delinquent in approximately 2008. (Item 5, March 2011 interview) The reason the account became delinquent was because she could not afford the payments after they increased from \$150 to \$300 in a short span of time. (Response to FORM) She stated to the investigator that she would contact the creditor

and negotiate a settlement figure. (Item 5, March 2011 interview) A March 10, 2011, credit report reflects that the account became delinquent in August 2009, in an amount of \$16,393.

Personal Conduct

Applicant executed an e-QIP on February 24, 2011. In response to question 26 (bills or debts turned over to collection agencies?), Applicant answered “no.” At the outset of an interview with an OPM investigator in March 2011, Applicant was asked whether she had bills turned over to an investigator?, she answered “no.” When the

investigator displayed the credit report in front of her, she acknowledged the delinquent debt in SOR ¶ 2.b belonged to her. As noted earlier, she stated she would contact the creditor. The record contains no evidence that contact was made with the creditor.

In her response to the FORM, Applicant stated,

“I knew that i had owed the monies to the [bank], but at the time was thinking it would “fall off” my credit report, which I know is not the responsible thing to do. I have come to realize mistakes just don’t “go away” and that you have to face the music and take responsibility for our actions. I apologize for this false statement and

am doing do diligence in order to resolve the issue.” (Response to FORM, at second page) No additional information was provided.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in

the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on sound and prudent

judgment. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. I have avoided drawing inferences

grounded on mere speculation or conjecture. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of

compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.15., the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate

facts admitted by applicant or proven by Department Counsel. . . ."

The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

Analysis

Criminal Conduct

The security concern for criminal conduct is set forth in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply

with laws, rules and regulations.

AG ¶ 31 of the criminal conduct guideline lists two disqualifying conditions that may be applicable to this case: AG ¶ 31(a) (*a single serious crime or multiple lesser offenses*), and AG ¶ 31(c) (*allegation of criminal conduct, regardless of whether the person was formally*

charged, formally prosecuted or convicted) are applicable.

Applicant was arrested and charged with aggravated assault on December 13, 2001. After a trial by jury, she was found guilty of aggravated assault and was placed on probation for 10 years. She was ordered to pay a fine, provide restitution,

perform community service, and complete anger management. AG ¶¶ 31(a) and 31(c) apply.

AG ¶ 32 lists the mitigating conditions that may be applicable in this case: AG ¶ 32(a) (*so much time has passed since the criminal behavior happened, or it happened under such circumstances that it is*

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment), AG ¶ 32(d) (there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or

constructive community development).

As the jury indicated with their finding of guilty, Applicant's use of deadly force under the circumstances in December 2001 was unreasonable under the circumstances. Almost 10 years have passed since the offense. In that time, Applicant has not

engaged in any criminal conduct. She has completed anger management and community service. She regrets the crime ever occurred.

F i n a n c i a l Considerations

The security concern for financial considerations is set forth 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. 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.

The Government has the responsibility of presenting sufficient information to support all

allegations of the SOR. Based on the credit reports (showing the delinquent debts listed in the SOR), Applicant's interrogatory responses (including his November 25, 2008 interview), and his answers to the SOR, the Government has presented sufficient information to establish all the allegations in the SOR. AG ¶ 19(a) (*inability*)

or unwillingness to satisfy debts) and AG ¶ 19(c) (*a history of not meeting financial obligations*) apply. AG ¶ 19(a) applies based on Applicant inability to pay the delinquent accounts totaling approximately \$48,800. The credit bureau reports establish that AG ¶ 19(c) applies because Applicant let four accounts fall delinquent

between May 2006 and February 2009.

Four mitigating conditions are potentially applicable. No mitigation is available under AG ¶ 20(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 reliability, trustworthiness, and good judgment). The four listed debts became delinquent between May 2006 and February 2009. The amount of delinquent debt and the lack of documented action to address the debt forecasts the probability the financial delinquencies will persist in the foreseeable future.

The likelihood of financial problems in the future without a strategy to eliminate the debt continues to cast a pall over Appellant's reliability and judgment.

AG ¶ 20(b) *(the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted*

responsibly under the circumstances). Based on the information Applicant provided about the loss of his job, this unanticipated event would weigh in his favor under AG ¶ 20(b) to explain why he could not continue to pay his delinquent debts. However, his SCA shows he has been employed consistently since 2001. Without more information,

his unemployment claim is not a credible reason for not paying the listed delinquent accounts.

Applicant should receive credit for joining a debt consolidation plan to demonstrate he acted responsibly after becoming unemployed. However, the credibility of his debt consolidation claim is substantially

diminished by the lack of documentation of the plan's existence and of payments under the plan. The passage of time from the end of 2008 (after he claims he made his most recent payments to three of the listed creditors) to June 9, 2010 (issuance of the SOR), without documented action to address his delinquent accounts, results in no

mitigation for Applicant under AG ¶ 20(b).

AG ¶ 20(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*) does not apply. The record does not indicate Applicant had financial counseling. His

enrollment in a debt plan in February 2008 indicates that he was concerned about his delinquent debts, and initially took responsible action to pay the accounts in an organized manner. However, he furnished no evidence showing he paid into the plan or that he paid any of the debts independent of the plan. Since there is no

indication of counseling or that the delinquent debts are under control, AG ¶ 20(c) does not apply.

Applicant receives no mitigation under AG ¶ 20(d), (*a good-faith effort to repay overdue creditors or otherwise resolve debts*) because there is no documentation confirming payments under the plan. After

weighing and balancing the disqualifying evidence against the mitigating evidence under the financial guideline, Applicant has not presented sufficient favorable evidence to receive access to a security clearance.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding against Applicant under the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance

of an individual's conduct, the administrative judge should consider the following factors listed in AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct;

(2) the circumstances surrounding the conduct, to include

k n o w l e d g e a b l e
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 the participation was 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.

Applicant is 50 years old. He had a successful 20-year career in the United States Army. He received six prestigious

awards for laudable military service in the field of information technology.

The credit bureau reports indicate that Applicant began having financial problems in May 2006 when the first listed debt became delinquent. After his divorce in September 2006, three additional debts became delinquent by February

2009. To substantiate his enrollment in the debt plan and/or payments to the plan, Applicant could have provided documentation. For some reason, he decided not to, even though he had a chance to explain his positions after he received the FORM. Since the end of 2008, Applicant could have tried another strategy, including a

Chapter 7 bankruptcy, to eliminate his debts. He could have tried a Chapter 13 bankruptcy to bring his delinquent debts under control. Instead, the record shows the only action taken was to cancel the security system contract. Without a plan to address the debts, the chances are that Applicant's current financial problems will

continue in the future. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9). The financial guideline is resolved against Applicant.

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): A G A I N S T
 A P P L I C A N T

Subparagraph 1.a
through 1.d A g a i n s t
 A p p l i c a n t

Conclusion

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

Paul J. Mason
Administrative Judge