



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 11-08507

Appearances

For Government: John Bayard Glendon, Esq., Deputy Chief Department Counsel
For Applicant: *Pro se*

03/08/2013

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her first security clearance application, an Electronic Questionnaire for Investigations Processing (e-QIP), on November 15, 2007, to retain a security clearance required for her position with a defense contractor. She had been granted eligibility for access to classified information while on active duty in the U.S. Air Force. She submitted another e-QIP on August 6, 2009, and retained her eligibility for access to classified information. Applicant's security manager reported that they received a wage garnishment request for Applicant for past-due property taxes. Applicant was required to submit another e-QIP, which she did on December 29, 2010. An investigation was conducted by the Office of Personnel Management (OPM). The Department of Defense (DOD) issued interrogatories to Applicant to clarify or augment information in her background. After reviewing the results of the background investigation and Applicant's response to the interrogatories, DOD could not make the affirmative finding required to continue a security clearance. DOD issued a Statement of Reasons (SOR), dated September 13, 2012, to Applicant detailing security concerns for

financial considerations under Guideline F and personal conduct under Guideline E. These actions were taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on November 8, 2012. She admitted four allegations (SOR 1.a, 1.e, 1.f, and 1.g) and denied three (SOR 1.b, 1.c, and 1.d) under Guideline F. She admitted the five allegations under Guideline E. Applicant provided detailed explanations for her responses. Department Counsel was prepared to proceed on November 26, 2012, and the case was assigned to me on November 29, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on December 19, 2012, scheduling a hearing for January 22, 2013. Applicant received the Notice of Hearing on January 5, 2013. I convened the hearing as scheduled. The Government offered nine exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 9. Applicant and one witness testified. Applicant offered seven exhibits that I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through G. I kept the record open for Applicant to submit additional documents. Applicant timely submitted one document that I marked and admitted into the record as App. Ex. H. Department Counsel had no objection to the admission of the document. (Gov. Ex. 10, Letter, dated January 23, 2013) I received the transcript of the hearing (Tr.) on January 30, 2013.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 55-year-old administrator for a defense contractor. She is a college graduate having received her bachelor's degree in 2003. She received a master's degree in 2004, and received another master's degree in 2010. Applicant was naturalized as a U. S. citizen in 1983. She served 25 years on active duty in the Air Force from 1980 to 2005, and retired with an honorable discharge as a master sergeant (E-7). She has been married three times, and was divorced from her third husband in December 2005. Applicant has two grown children. She was granted access to classified information and sensitive compartmented information (SCI) in 2003. Her access to classified information and SCI was suspended for financial considerations reasons in March 2009. Her access to classified information but not SCI was reinstated in May 2009. (Tr. 12-15, 40; Gov. Ex. 1, e-QIP, dated December 29, 2010)

Credit bureau reports (Gov. Ex. 5, dated May 19, 2012; Gov. Ex. 6, dated August 14, 2012; Gov. Ex. 7, dated September 1, 2009; Gov. Ex. 8, dated September 6, 2008; and Gov. Ex. 9, dated January 20, 2011) show the following delinquent debts for Applicant: \$4,000 past due on a mortgage loan (SOR 1.a); a charged off credit card debt for \$7,000 (SOR 1.b); a loan charged off for \$2,000 (SOR 1.c); a credit card debt charged off for \$4,000 (SOR 1.d); a store credit card charged off for \$1,000 (SOR 1.e); a loan charged off for \$3,202 (SOR 1.f); and a credit card debt in collection for \$2,223

(SOR 1.g). The total amount of the delinquent debt is approximately \$23,000. Applicant established that the debts listed at SOR 1.c and 1.f are the same debts on the same loan. (Tr. 53-54)

Applicant had stable finances until mid-2004. She and her husband separated in August 2004 and divorced in December 2005. She had large attorney fees for the divorce. Her brother passed away on May 29, 2007. She had to assist her family by paying funeral expenses in excess of \$3,000. She also had rental property that she rented to a new tenant on June 1, 2007. While Applicant was attending her brother's funeral, the tenant's checks for the security deposit and first month's rent were not paid by the bank for insufficient funds of the tenant. The tenant continued to occasionally fail to pay the rent. In late 2007, Applicant had her evicted from the property. Applicant had to pay her own mortgage loan and the rental property mortgage loan without the benefit of the rent. Applicant continued to pay her debts as best she could. However, the credit reports show that her debts started to become delinquent in November 2007, and continuing into mid-2008. (Tr. 27-30, 41-45)

Applicant contracted with a debt consolidation company in October 2008 to assist her to pay her debts. She paid them \$635 per month by automatic bank deduction until October 2012. Applicant was able to pay all of her delinquent debt through the debt consolidation company, and even received a refund of approximately \$168. Applicant has no delinquent debts and her debts are now being paid as agreed. (Tr. 23-27, 45-54, 78-79; App. Ex. A, Credit Counseling Company document, dated October 5, 2009; App. Ex. B, Credit Counseling Company of Paid in full letter, dated November 15, 2012; App. Ex. C, Refund Receipt, dated November 15, 2012; App. Ex. H, List of Credit Consolidation Accounts, dated July 14, 2012)

Applicant and her husband had marital issues in 2004. He was involved in an affair with another woman. They attended marriage counseling and her husband agreed to stop the affair. However on August 8, 2004, Applicant's husband told her that he was going to work. Applicant suspected that he was going to see the other woman. She went to the home of the other woman and confronted both of them. As Applicant was leaving the area, she used her key to scratch her husband's car. Applicant remained in the area. Her husband and the woman started to leave shortly after the confrontation, Applicant accidentally bumped into the rear of his car. It is not clear if this was what caused Applicant's husband to run over a curb and into an object damaging his car. Applicant left the area after determining her husband was not injured. Shortly thereafter, she received a call from a police officer asking her to return to the scene of the accident. She did, and was apprehended by police and charged with first degree assault, second degree assault, reckless endangerment, trespassing on private property, and malicious destruction of property. She spent a few hours in jail and was required to post bail of \$50,000. She went to court and was sentenced in October 2004 to probation before judgment and fined approximately \$250. Later, the judge expunged the offense from her record. (Tr. 55-62, 73-76; Gov. Ex. 9, Criminal Information Report)

After this incident, Applicant completed three security clearance applications. (Gov. Ex. 1, dated December 29, 2010; Gov. Ex. 2, dated August 26, 2009, and Gov. Ex. 3, dated November 16, 2007) In each of the applications, the same question was

asked whether in the last seven years she had ever been issued a summons, citation, or ticket to appear in court on criminal charges. The question also stated that any offense must be noted even if the record in the case had been sealed, expunged, otherwise stricken from the court record, or the charges dismissed. On each of the applications, Applicant failed to list the 2004 arrest and probation before judgment. Applicant was also questioned about the offense by security investigators in October 2009, and she failed to tell the investigator about the offense. (Tr. 55-56)

Applicant admitted she failed to list the incident on the security clearance applications as well as to tell the investigator. She noted that when she completed the applications, there were many issues in her lives. She had been through a difficult divorce, her brother had died, and she was in a new master's degree program. She had other high level stress issues. In addition, the court record of the incident had been expunged and her attorney had informed her that the incident was no longer in her record. Her stress level was so high she just wanted the incident to go away. (Tr. 56-58)

Applicant was interviewed by a security investigator in October 2009. She denied the arrest to the investigator. (Gov. Ex. 4, Response to Interrogatory, Interview transcript, October 5, 2009 to October 16, 2009 at 5) She was embarrassed about the incident and she did not "want to explain the situation to her." Applicant was interviewed by a second investigator a few weeks later. In that interview, the investigator specifically asked her about the August 2004 arrest for assault. She acknowledged the arrest and discussed it completely. Applicant, in answering the interrogatory, agreed that the transcript of the interview was basically correct. (Tr. 62-72: (Gov. Ex. 4, Response to Interrogatory, Interview transcript, October 27, 2009 to October 30, 2009 at 1-2)

Applicant is almost sure that she read the instruction on the security clearance applications including the statement to include an item on the application even if the record of the incident had been expunged. However, in her mind since the incident was expunged, she did not have to answer for it. She now knows that she was wrong. She looked at the incident as something that happened in her life that she wanted to put behind her. It was not something she wanted to continue to deal with. She was "absolutely" embarrassed to reveal the incident to the government. She believed that government agents would reveal this information to others and it would be embarrassing for her. (Tr. 58-62, 76-78)

Applicant also answered "no" to the question on her December 29, 2010 security clearance application asking if she had any debts in the last seven years that where in collection, charged off, or cancelled for failure to pay as agreed. As noted above, she did have delinquent debts before and in 2010. On the application, Applicant noted that she lost access to SCI for financial considerations reasons. Department Counsel agreed that this information put the Government on notice of her financial issues. When she completed the application, she was in the process of paying the debts through the debt consolidation company. (Tr. 88-90)

Applicant's governmental supervisor testified that she has known Applicant for over six years, and sees her every day since she is the project lead for Applicant. She

finds Applicant to be very reliable, have the highest quality of trustworthy, and exercises very good judgment. (Tr. 83-86)

Applicant presented information that she has been rated by her employer each year since 2007. (App. Ex. D, Assessment History) She received awards for good performance and excellent work. (App. Ex. E, Awards). Her performance ratings show that she is regarded as a high contributor, willing to go the extra mile, is mission-oriented, and has a can-do and self-starting attitude. (App. Ex. F, Performance Evaluations) She works many overtime hours so the mission is accomplished (App. Ex. G Time Sheet)

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 must be considered 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 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking 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 that the applicant may deliberately or inadvertently fail to 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.

Analysis

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 overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is at risk and inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's delinquent debts as shown by credit reports and her admissions raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability and not unwillingness to satisfy debt. Applicant incurred delinquent debt after her divorce, and when she had extra expenses for her brother's funeral, and her renter did not timely pay his rent.

I considered Financial Considerations Mitigating Conditions 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 current reliability, trustworthiness, or good judgment); and AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions apply.

Applicant incurred debt from paying large attorney fees for her divorce in 2004. She continued to pay her debts as best she could until June 2007. She paid her brother's funeral expense since she was the family member best capable of paying the expenses. She had to pay the mortgage loan on a second property because the renter did not timely pay the rent. The credit reports show that her debts started to become delinquent in late 2007 and continued into 2008. The causes of the debts were beyond her control and the circumstances are unlikely to recur. Applicant contracted with a debt consolidation company in October 2008 to assist her in paying her debts. She paid the debt consolidation company the monthly amount of \$635 by automatic bank deduction until October 2012 when all debts were paid. Applicant established that she acted responsibly towards her debts under the circumstances. Her present finances are under

control and she has not incurred any additional debt. She has sufficient funds to meet her financial responsibilities.

I also considered AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) in regard to this allegation. For AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts.

Applicant initiated a plan to pay her debts shortly after they became delinquent. She contracted with a debt consolidation company to help her pay the debts. She paid the monthly fees by automatic bank deduction. Applicant not only had a plan but she completed the plan and the debts are paid in full. Applicant's actions to resolve her past delinquent debts are a meaningful track record of paying debts. She established a reasonable and prudent adherence to her financial obligations. Her past financial issues do not reflect adversely on her trustworthiness, honesty, and good judgment. Based on all of the financial information available to include the information provided by Applicant, I conclude that Applicant has mitigated security concerns based on financial considerations.

Personal Conduct

A security concern is raised for personal conduct based on Applicant's responses to financial and criminal questions on her e-QIP. Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the U. S. Government.

Applicant was arrested for assault and destruction of property in 2004. She was jailed for a few hours, let out on bail, and was eventually fined and placed on probation before judgment. The matter was later expunged from her record. She did not list the incident in response to questions concerning her police record on security clearance applications she submitted in 2007, 2009, and 2010. She also denied the offense to a security investigator in 2009. On the 2010 security clearance application, Applicant answered "no" to a financial question asking if she had debts in collection, charged off,

or suspended accounts in the last seven years. At the time, she had delinquent debts she was in the process of paying. Her failure to list the criminal charges and the debts on the security clearance applications raise a security concern under Personal Conduct Disqualifying Conditions AG ¶ 16(a) (the deliberate omission concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness); and AG ¶ 16(b) (deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative).

Applicant admitted that she intentional falsified the responses concerning the criminal charges on the three security clearance applications and to the security investigator. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. Applicant was embarrassed about her criminal charges, and she wanted to put the issue behind her. She did not want to reveal it to government agents. She knew the charge had been expunged from her record and her attorney had advised her that she did not have to be concerned about the offense any longer. I find that Applicant did not list the offense because she was embarrassed by the circumstances of the offense and what it did to her life and marriage. She did not want to answer questions about the incident any longer and wanted to put the issue behind her. It was not because she believed the record had been expunged and she did not have to list it.

I considered personal conduct mitigating conditions AG ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts); AG ¶ 17(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully); and AG ¶ 17(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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment).

Applicant intentionally and deliberately failed to provide accurate information in response to questions on the security clearance applications. As noted, she admitted she did want to provide the information because she was embarrassed by the circumstances. Her refusal was not because of a mistaken belief that she did not have to disclose the information because it was expunged from her records. She did not admit the omission until confronted by the second security investigator. Deliberately wrong responses to security clearance questions are not minor issues, and may likely happen again. In the future, Applicant could take the position that she need not reveal embarrassing information. The above mitigating conditions do not apply.

In regard to the allegation concerning failure to provide truthful financial information on the 2010 security clearance application, I find that Applicant did put the Government on notice of her financial problems because she noted that her SCI access

had been revoked for financial consideration reasons. At the time, she was paying the debts under a payment plan. Department Counsel agreed that the failure to provide the information was not deliberate. I find for Applicant as to SOR allegation 2.e.

Whole-Person Analysis

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

Under AG ¶ 2(c), 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I consider the favorable information provided by Applicant's supervisor. I considered that Applicant is an excellent employee as evidenced by her evaluation reports, her awards, and the amount of overtime she worked to accomplish the organization's mission. I considered that Applicant held a security clearance for many years. I considered her 25 years of honorable active duty service in the Air Force. I considered that Applicant's financial problems were caused by circumstances beyond her control, and that she took reasonable and responsible steps and has resolved her financial problems showing her good-faith efforts.

However, Applicant deliberately did not provide truthful and complete information on three security clearance applications and in response to questions by a security investigator. As noted in the security concerns, a refusal to provide full, frank, and truthful answers to lawful questions of investigators and in response to questions on security forms will normally result in an unfavorable clearance action. The Government must rely on receiving accurate and complete answers during the security clearance process to ensure that granting access to classified information in the best interest of the Government. Applicant deliberately did not provide the information concerning her arrest for assault and destruction of property resulting from a domestic incident in 2004. Her deliberate failure to provide correct information because the information may be embarrassing indicates that she places her embarrassment over the need to be truthful in providing the Government security information. Her deliberate failure to provide correct information is a pattern of conduct that shows she may not be concerned, responsible, and careful regarding classified information. Overall, the record evidence

leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under financial considerations. She has not mitigated security concerns based on the personal conduct guideline. Eligibility for access to classified information is denied.

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:	FOR APPLICANT
Subparagraphs 1.a – 1.g:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.d:	Against Applicant
Subparagraph 2.e:	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.

THOMAS M. CREAN
Administrative Judge