



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



In the matter of:)	
)	
)	ISCR Case No. 11-08807
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip Katauskas, Esq., Department Counsel

For Applicant: *Pro se*

01/30/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for financial considerations, but has failed to mitigate the personal conduct concerns. Accordingly, her request for a security clearance is denied.

Statement of the Case

On September 28, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) citing security concerns under Guidelines F (financial considerations) and E (personal conduct) of the Adjudicative Guidelines (AG).¹

¹ Adjudication of the case is controlled by Executive Order 10865, as amended; DOD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

In her Answer to the SOR, Applicant admitted the allegations in the SOR regarding delinquent debts. She denied the allegations regarding deliberate falsification of her security clearance application. She requested a hearing before an administrative judge. DOHA issued a Notice of Hearing on November 21, 2012, and I convened the hearing as scheduled on December 13, 2012. I admitted five exhibits offered by the Government (GE 1 through 5), and five exhibits offered by the Applicant (AE A through E). I granted Applicant's request to submit additional documents, but did not receive any additional documents. DOHA received the transcript on December 27, 2012.

Procedural Matters

The SOR lists three allegations under Guideline E. Due to administrative error, the third allegation is numbered "1.d." I amended the SOR to correct the error. The third allegation under Guideline E is re-numbered, "1.c."

When Applicant answered the SOR, she discussed the status of the debt listed in the SOR at paragraph 1.b. In the second paragraph of her Answer, she stated, "...is it charged off." Because this statement did not follow logically from the meaning of the entire sentence, I asked her to clarify her response at the hearing. She responded that her intent was to write, "...it is not charged off."

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is 45 years old, divorced, and has two teen-aged children. She completed her bachelor's degree in 1989. She has worked for a defense contractor as an office administration specialist since April 2011. This is her first application for a security clearance. (GE 1)

Several friends submitted character references for Applicant. One long-standing friend is an attorney who represented her in complex matters. He found Applicant to be straightforward, truthful, and trustworthy. Another attorney-friend, who has known her for nine years, extolled Applicant's volunteer work and noted that Applicant has the trust and respect of their school's administration, teaching staff, and parents in her community. When her sister passed away, she trusted Applicant to care for her two young children while she attended to family needs in another state. Other friends attested to her trustworthiness and willingness to help others. Applicant is active in her community. She has served four years as Parent-Teacher Association vice president and president. Applicant's sister-in-law testified. She is an investigator and conducts investigations on security clearance applicants. She has known Applicant since 1997,

and is familiar with Applicant's financial struggles over the past several years, when her husband left her and the economy declined. She believes Applicant is honest and would not intentionally falsify information to the Government. (AE B; Tr. 71-81)

Applicant worked full-time as a county human services worker/social worker from 1991 to 2003. She was then unemployed for one-and-one-half years until 2004, because her son was chronically sick and she needed to care for him. She worked part-time as a pre-school teacher from 2004 to 2006, and was unemployed for four months in 2006. She worked from October 2006 until the end of 2007 as a pet sitter. After two months unemployment, she obtained a part-time job as a county substitute teacher from February 2008 until February 2010, when she accepted her current full-time position. (GE 1, 3; Tr. 40)

In December 2006, Applicant's husband stated he wished to end their 19-year marriage. Their attempt at marriage counseling was unsuccessful. Applicant's husband moved out of the marital home in March 2007. Applicant's marriage counselor, and the children's school counselor, recommended that she work part-time so that she could be available for her children after school. Applicant's husband initially provided support via deposits to their joint checking account, but in November 2007, he withdrew the financial support and remarried. For approximately six months, Applicant used credit cards to pay for the family's monthly household expenses of \$5,000, as well as counseling, attorney's fees, and a \$4,000 car repair bill for her car. Applicant's part-time income was \$400 per month. The three debts in the SOR represent balances on the credit cards that Applicant used to pay expenses during this period. (AE A; Tr. 32-39)

In February 2008, Applicant became a substitute public school teacher. Applicant's ex-husband started paying \$1,700 in child support in June 2008. The divorce was finalized as of November 2008. Her credit card debt had reached \$30,000. She made payments as she was able. Applicant sought financial advice from a family friend who is a financial planner. Her financial advisor helped her create a plan to resolve her delinquent debt. Her advisor suggested filing for bankruptcy protection, but Applicant wished to be responsible for the debts. She was able to pay her financial planner and her divorce attorney over a period of one year. (AE A, C)

According to her personal financial statement (PFS) of July 2012, Applicant earned \$45,700 annually. Her net monthly income is \$2,708, but with child support, it increases to \$4,408. Her monthly expenses totaled \$356. She listed debt payments of \$521, which included payments on the three accounts alleged in the SOR. Her net remainder was approximately \$328. She recently received a raise and now earns \$48,100, which increases her monthly net remainder by about \$130. Part of Applicant's monthly expenses includes support of her mother. Applicant supported her part-time from 2008 to 2010, at which time her mother moved in with Applicant permanently. Applicant pays for her medical prescriptions as well. (GE 2; Tr. 41-43, 66)

Applicant was unable to consistently pay on the three credit card accounts before she obtained her current full-time job in April 2011. The current status of the SOR debts follows. They appear in Applicant's credit bureau reports of May 2011, and June 2012. (GE 3, 4, 5)

1.a, credit card (\$10,563) – Applicant opened this credit card in 2000, and used it to pay family living expenses during her divorce. She was able to keep it current for a time, but it became delinquent in 2009. It was closed, charged off and in collection status on her May 2011 credit report. In April 2011, she arranged a payment plan with the creditor of \$139 monthly. At the hearing, she testified that she contacted the creditor again in about March 2012. She could not afford the lump-sum settlement that the creditor offered. Her brother and her boyfriend offered to lend her the funds, but she wanted to pay the debt herself because it was her debt. She began payments of \$100. Recently, she reduced the payment to \$50 per month. She testified that it was not a payment plan, because she paid the company when she could afford it. Applicant has made multiple requests for receipts to show her payments, but has been unsuccessful. She was able to provide one statement showing her \$50 payment made on December 11, 2012. (GE 2, 3, 4; AE E; Tr. 23-28, 42, 45-47, 63-65)

1.b, credit card (\$11,098) – Applicant used this credit card to pay for living expenses during her divorce. It became delinquent in about 2009. During her May 2011 security interview, she said she spoke with the creditor, but she could not afford to make payments. In 2012, she contacted the creditor. She was offered a settlement but could not afford it. Her brother and her boyfriend offered to lend her the funds, but she wanted to pay the debts herself because it was her debt. She arranged a payment plan. As of July 2012, she had been paying regularly on the account. She testified that she started payments in about May or June 2012, and provided documentation showing monthly payments of \$105.95 between July and December 2012. The payments are automatically deducted from her bank account. In June 2013, the account will be evaluated and she may be offered a reduction of the balance. (GE 2, 3, 4; AE D; Tr. 44-48, 63-65)

1.c, credit card (\$3,613) – Applicant used this credit card to pay family living expenses during her divorce. It was charged off in August 2010. Her 2011 credit report shows it in collection status. At her May 2011 security interview, Applicant stated that after it became delinquent, she began payments of \$300 to \$400 per month. At a second interview in June 2011, Applicant stated that she had been making payments, but at times she was unable to afford it, or to make even the minimum payment, and it became delinquent. She re-started with payments of \$100 per month in June 2011. The debt was sold several times. In about March 2012, Applicant attempted to reach the current creditor, but the company did not return her calls. (GE 3, 4; Tr. 46-48)

Applicant completed a security clearance application in April 2011. Section 26 comprised 16 questions related to her financial status. It asked if, during the previous seven years, she had any accounts that were charged off (question 26h); any debts

more than six months past due (question 26m); or any debts that were 90 days delinquent on the day she completed the application (question 26n). Applicant answered “No” to all of the financial questions, including these three questions. At the end of the application, she signed a certification which stated that her answers were true, and acknowledging that willful falsification could result in fine or imprisonment. The certification also noted that such falsifications could have a negative effect on her security clearance or job status. (GE 1; Tr. 49, 54-61, 68)

Applicant met with a security agent in May 2011 to discuss her debts. At that time, the agent noted that she had not disclosed her debts, but the agent did not ask her the reason. The agent returned and interviewed Applicant a second time, on June 3, 2011, to determine why she had not disclosed her debts on her security clearance application. Applicant stated it was due to oversight; she did not recall seeing the questions; and she might have “skipped over them.”² She denied deliberately concealing her debts. (GE 1, 3)

At the hearing, Applicant testified that she completed her security clearance application at work. Other than receiving the form via email, she had no contact with her security office, and no security personnel provided information about completing the form. She stated she should have tried to complete it outside of the work environment, where she could have taken more time. At the time she completed the application, Applicant had not used any of the three credit cards listed in the SOR for two years, and was not aware if they had been cancelled or suspended. She also had not seen her credit report since March 2007. She testified that she misunderstood the question about charged-off debts. However, she also testified that she was aware at the time she completed the application that she had charged-off debts. She also said she did not think she was 180 days delinquent or currently 90 days delinquent at the time because she had been making sporadic payments on her debts. She testified that she did not try to purposefully mislead the Government because she knew her finances would be investigated. (Tr. 49, 54-61, 68)

Policies

Each security clearance decision must be a fair, commonsense determination based on all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.³ Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable

² DOHA provided Applicant with a copy the agent’s summaries of both of her security interviews to allow her to review them and correct any errors. Applicant signed the interrogatory, and indicated that she accepted and adopted the summaries as accurate. (GE 3)

³ Directive. 6.3.

guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guidelines F and E.

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁵ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interest as her or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁶

Analysis

Guideline F (Financial Considerations)

AG ¶18 expresses the security concern pertaining to 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 over-extended is at risk of having to engage in illegal acts to generate funds.

Applicant accrued significant debts that were unpaid, charged-off, and in collection status as of the date of the SOR. The record supports application of the following disqualifying conditions under AG ¶19:

(a) inability or unwillingness to satisfy debts; and

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(c) a history of not meeting financial obligations.

The financial considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶20, especially the following:

(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 financial problems stem from a confluence of events: her young chronically ill son needed her attention for several years and she could not work outside the home; her mother needed support and moved in with Applicant; Applicant was unemployed for several periods; her husband moved out and for approximately six months, Applicant subsisted without his financial support on her low salary. When she began working, it was part-time employment for low wages. None of these conditions was foreseen. She began to accrue debt as she paid for her children's and mother's needs with credit cards. Applicant acted reasonably by seeking full-time employment, forcing her ex-husband to provide child support, and contacting her creditors to arrange payment plans. She has taken steps to pay her delinquent accounts by making payments on two of three debts in the SOR. AG ¶ 20(b) applies.

Applicant's friend, a financial planner, gave her advice on her debts. He helped her create a plan to resolve them. She contacted her creditors to arrange payments. She provided documentation showing her payments related to two SOR debts. She sought to work with the creditor for the third debt, the smallest of the three, but has been unable to contact the creditor. After a divorce that resulted in a significant financial strain, Applicant has made a good-faith effort, resulting in progress in resolving her financial situation. AG ¶¶ 20(c) and (d) apply.

Guideline E (Personal Conduct)

AG ¶ 15 expresses the security concern about 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.

The Government alleges that Applicant deliberately failed to disclose her financial delinquencies, implicating the following under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to report any financial issues on her April 2011 security clearance application. Even though three of her credit card accounts had been delinquent – at least for some periods during the previous two years -- she answered “No” to the questions that asked if she had any accounts charged off, 180 days delinquent in the previous seven years, or currently 90 days past due. Applicant was aware that she had been having financial problems since her separation and divorce. She also knew that they were not resolved at the time she completed the application. Applicant may have reasonably thought she did not have any debts that had been six months past due, or that were 90 past due in May 2011, because she had been paying on them sporadically as she had funds available. However, Applicant answered “No” to question 26h, denying any charged-off debts, even though she was aware that her accounts had been charged off. Her knowing failure to disclose this fact constitutes deliberate falsification. AG 16(a) applies.

Among the mitigating conditions under AG ¶17, the following are relevant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

There is no evidence that Applicant informed any authorized government official that she wished to correct the answers on her applications. Although she discussed her debts with the investigator during the security interviews, the Appeal Board has held that subsequent honesty at an interview does not negate the security implications of initial dishonesty on a security clearance application.⁷ AG ¶17(a) cannot be applied.

⁷ ISCR Case No. 02-23073 at 3 (App. Bd. Mar. 20, 2004).

Applicant failed to disclose that she had charged-off debts, even though she was aware of their status when she completed the application. She signed a certification that her answers were truthful, even though she had not disclosed her actual financial condition. Applicant's failure to be forthright with the Government during a security clearance investigation is not minor. She completed the application less than two years ago, which is not distant in time. Applicant's actions reflect poorly on her reliability and judgment. AG ¶17(c) does not apply.

Whole-Person Analysis

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

AG ¶ 2(c) requires that 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. Under each guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant demonstrated a good-faith effort to meet her financial obligations when she contacted the SOR creditors, and worked with them on a plan to pay two of the three debts. She has been making payments on the two debts since before the SOR was issued. She also tried several times in 2012, unsuccessfully, to locate the current creditor for the third debt. Given her monthly net remainder, supplemented by her recent raise, I conclude she will continue to make payments and resolve her delinquencies.

When Applicant completed her security clearance application in 2011, she failed to inform the government of her true financial situation. Applicant might have reasonably thought her debts had not been six months past due at any point, or 90 days past due as of May 2011, because of her intermittent payments between 2009 and 2011. Applicant was a mature, educated, and experienced adult at the time who signed a statement that she would be honest and truthful in completing the application. Nevertheless, she knowingly failed to disclose her charged-off debts. The Government

must be able to rely on security clearance applicants to be candid and forthright during the security clearance process.

Overall, the record evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns raised by the personal conduct guideline.

Formal Findings

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a – 1.c	For Applicant
Paragraph 2, Guideline E	AGAINST APPLICANT
Subparagraph 2.a	Against Applicant
Subparagraphs 2.b, 2.c	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge