



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 11-08992 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Philip Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

01/31/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to mitigate security concerns raised under the guidelines for financial considerations and personal conduct. Her request for a security clearance is denied.

Statement of the Case

On August 31, 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

In her undated Answer to the SOR, Applicant admitted the financial allegations and denied the deliberate falsification of her security clearance application. She

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.

requested a decision without a hearing. Department Counsel, pursuant to Directive ¶ E3.1.7, requested a hearing before an administrative judge. DOHA issued a Notice of Hearing on November 26, 2012, and I convened the hearing on December 18, 2012. I admitted 6 exhibits offered by the Government (GE 1 through 6), and 18 exhibits offered by the Applicant (AE A through R). I granted Applicant's request to submit additional documents. I timely received four additional documents, which I admitted without objection as AE S through V. DOHA received the transcript on January 2, 2013.

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 53 years old. She was married from 1980 to 1996. She is divorced and has no children. She graduated high school in 1977. This is her first application for a security clearance. She held an interim security clearance from 2010 until October 2012. (GE 1, 3; AE J; Tr. 10, 48-56, 70)

Financial Considerations

Applicant has been employed full-time since 1997. She was a legal assistant at a law firm from 1997 to 2008, at pay of \$23 per hour, or approximately \$47,000 annually. In 2008, she heard rumors of possible layoffs, and decided to look for other work. She obtained an administrative position at a medical facility from August 2008 to May 2010, at a pay rate of \$16 per hour, or approximately \$33,000 annually. She began her current position as a project liaison in June 2010. She has held that job under three different defense contractors. (AE M; Tr. 31-33, 47-56)

During her security interview, Applicant told the investigator that her debts were delinquent because she had used bad judgment by over-extending her credit. She began receiving collection notices from her creditors in 2007. After she accepted the lower-paying job in 2008, her financial situation worsened. She was unsuccessful at finding part-time employment to supplement her income. In 2009, she sought help from a law firm and was advised by an attorney not to file for bankruptcy protection. The attorney advised her to stop paying her bills and he would set up payment plans with her creditors. She started paying \$425 monthly to the law firm in early 2009. She paid for approximately one year. (GE 3; Tr. 31-33, 47-56)

Applicant stated in her Answer that she did go forward with a Chapter 7 bankruptcy petition.² In about September 2010, she decided to withdraw the petition. In

² The evidence is unclear about Applicant's contacts with attorneys. It appears she was counseled not to file for bankruptcy (GE 3 at p. 3), but she also consulted an attorney to assist her in filing for bankruptcy protection. (Tr. 31) It is unclear if she worked with the same attorney, or two different attorneys.

the interim, judgments had been filed against her, the debts had gone into collection status, and her home had been foreclosed. (GE 1, 3; Tr. 31-34; Answer)

According to her personal financial statement (PFS) of July 2012, Applicant earns approximately \$43,000 annually. Her net monthly income is \$2,453. Her monthly expenses total \$1,100. After making monthly debt payments of \$740, which includes payments on three accounts alleged in the SOR, her net remainder is \$613. (GE 2)

The current status of the SOR debts follows. They appear in Applicant's credit bureau reports of July and November 2010, and July 2012. (GE 3, 4, 5)

Collection accounts (allegations 1.a, 1.b). Applicant owed medical debts of \$272 and \$180, respectively. Applicant had out-of-pocket expenses related to surgery in 2011.

- She submitted documentation showing that on December 12, 2012, she paid the outstanding balance of \$260 owed on the debt listed in allegation 1.a.
- On August 7, 2012, she paid the balance of \$180 owed to her doctor, cited in allegation 1.b. (GE 3; AE A, B, L, N; Tr. 28-30)

Judgments (allegations 1.c, 1.d).³ Two of Applicant's creditors filed judgments against her in June 2009 for \$19,176 and \$6,949, respectively, owed on personal loans.

- Applicant stated in her interrogatory response of July 2012 that she was paying \$325 monthly on the \$19,176 judgment debt. Her documentation shows regular payments since May 2010. The balance as of October 2012 was \$10,302.
- The evidence shows that the judgment for a personal loan of \$6,949 (allegation 1.d) is the same loan as that cited as a charged-off account in allegation 1.f. It was referred for collection in February 2009. Applicant made three \$100 payments to the law firm holding the debt, in August, September, and October 2012. The balance was \$10,502 in October 2012. (GE 3; AE C, D, O, P; Tr. 35-42)

Charged-off accounts (allegations 1.e, 1.f, 1.g). Applicant owed delinquent debts of \$5,315, \$5,096, and \$7,741, respectively.

- The evidence is unclear as to the status of the debt at allegation 1.e. Applicant stated in her interrogatory response that she was restarting payments of \$100 per month on August 15, 2012 for this charged-off debt. She was paying 80 percent less than the original balance. However, in her Answer, she stated that she was still waiting for a reply from the creditor, and had not been "involved with" the creditor for "some time." At the hearing, Applicant testified that the debt at allegation 1.e is owed to the same creditor as the debt at allegation 1.c, and she believed the debt at

³ Applicant provided documentation in her interrogatory response showing that she paid a third judgment in full, in the amount of \$1,821. The documentation is dated September 2011. The judgment is not alleged in the SOR. (GE 3)

1.e is included in the \$19,176 listed at allegation 1.c. She did not provide supporting documentation.

- Allegation 1.f (\$5,096) is the charged-off debt listed at allegation 1.d (\$6,949) before the creditor filed judgment.
- As to allegation 1.g, Applicant stated in her interrogatory response that as of August 25, 2012, she was resuming \$125 monthly payments on the loan. She provided evidence of one payment in September 2012, but none showing payments in October through December 2012. (GE 3; AE E, F, G, O, P, Q; Tr. 40-46)

Mortgage (allegation 1.h). Applicant's July 2012 credit report lists her mortgage loan as more than \$16,000 past due, with a loan balance of \$93,000.

- Starting in 2008, when she accepted the lower-paying job, Applicant found it difficult to make her payments of approximately \$1,700 per month. A realtor friend advised her to surrender her property. In 2009, Applicant informed the mortgage company she could no longer afford payments, and forwarded the deed and her keys. She received a letter several months later saying her home had been auctioned. Applicant was aware she would be responsible for any debt remaining after the sale. Applicant did not receive forms from the Internal Revenue Service (IRS) regarding the sale, and did not receive any further information from the lender. (GE 3, 4, AE H, R-V; Tr. 46-51, 68-69)
- At the hearing, Applicant stated she would check into the current status of the loan. After the hearing, she contacted the mortgage company and was informed that the property had been sold and she no longer owed a balance on the mortgage. The company refused to send her written confirmation. Her July 2010 credit report lists the mortgage as "foreclosure redeemed;...Credit grantor reclaimed collateral to settle defaulted mortgage." (GE 3, 4, AE H, R-V; Tr. 46-51, 68-69)

Personal Conduct

In June 2010, Applicant completed a security clearance application. Section 26 contained 16 questions related to her financial status. Among other financial information, Applicant was asked if, during the previous seven years, she had any of the following financial problems: property foreclosed; judgments entered against her; defaulted on any loan; had debts sent to a collection agency; had accounts charged off; had debts more than 180 days past due; or had debts 90 days past due at the time of the application. Applicant answered "No" to all of the financial 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)

Applicant met with an investigator of the Office of Personnel Management (OPM) in August 2010 to discuss her debts. She informed the investigator that during her hiring interview, she had told her project manager about her debts. The manager told her not to list her debts on her security clearance application because it would slow down the hiring process. She told Applicant that when she has her security interview, she could inform the investigator of her debts. Applicant testified that she had not completed a security clearance application before, and was unsure about the process, and the manager portrayed that approach as common practice. Applicant testified she followed the manager's advice. She now realizes it was the wrong thing to do. She did not consult with any security personnel at her company about completing the application. Applicant had a second security interview three months after the first 2010 interview. At that time, Applicant stated she did not understand the financial questions, and was not being deceptive."⁴ In her 2012 Answer to the SOR, she said she answered the financial questions "in error," and "by mistake" because she was "going too fast thru the questionnaire." At the hearing, she stated she did not know why she did not mention her manager's advice when she completed her Answer to the SOR. (GE 3; AE I; Tr. 53-55, 70-71, 86-90)

Applicant's witness, her sister, holds a secret security clearance. Applicant did not consult her for advice about answering questions on the security clearance application. The witness is aware of Applicant's debts, and stated that Applicant has been making "a great effort" to pay them. (Tr. 79-86)

Applicant submitted six character references. A chief scientist at her job location described her conscientious treatment of sensitive documents, and noted that in the 1.5 years he has known her, she has been honest, trustworthy, and displayed integrity. The chief of a department at Applicant's job site praised her good character. Two co-workers describe Applicant as "...somebody you can trust and confide in...." A friend of 37 years is aware Applicant has had financial problems, but believes she has managed her credit and bills conscientiously. In her opinion, Applicant would not intentionally provide inaccurate information. (AE J)

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.⁵ 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 guidelines are

⁴ DOHA provided Applicant with a copy the investigator'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)

⁵ Directive. 6.3.

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 interest⁶ 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 decision to deny or revoke a security clearance for an applicant. Additionally, the Government must 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.⁷ 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 to 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.⁸

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.

As of the date of the SOR, Applicant had significant debts that were unpaid, charged-off, and in collection status, and had a foreclosed mortgage loan. The record supports application of the following disqualifying conditions under AG ¶19:

(a) inability or unwillingness to satisfy debts; and

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ 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:

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

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's debts are both numerous and recent, as most of them have continued from 2007 to the present. She admitted to the investigator that she made poor financial decisions. Her job as a legal assistant for 11 years provided adequate income to meet her debts. But in 2008, her voluntary decision to leave that job and accept a lower-paying job contributed significantly to her delinquencies. Her income dropped by approximately \$14,000 annually. She could not meet her mortgage payments, and her house was foreclosed by the lender. Applicant's debts did not result from conditions beyond her control. AG ¶ 20(a) and (b) do not apply.

Applicant made some efforts to resolve her debts. In about 2009, she sought assistance from a law firm, and made payments for about one year. AG ¶ 20(c) applies. She has also maintained a payments on the \$19,000 judgment, which has reduced it by almost half. She recently paid off the two smallest SOR debts. She has confirmed that she has no outstanding balance on her mortgage loan. However, Applicant is approximately \$35,000 in debt. Her efforts on the remaining debts have

been inconsistent, with one to three payments on some debts after she received the DOHA interrogatory in August 2012. One debt of \$6,949 has increased to \$10,500. Her financial situation is not under control. Applicant receives partial mitigation under AG ¶ (d). After the hearing, Applicant determined that she had no remaining balance on her mortgage loan, though her credit report showed more than \$16,000 outstanding. She submitted a dispute letter after the hearing, but it does not indicate the credit reporting agency to which it was directed. Applicant receives partial credit under AG ¶ 20(e).

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 2010 security clearance application. She knew she had financial problems since 2007, and knew that they were not resolved at the time she completed the application. She discussed them with her hiring manager. However, she decided to answer "No" to seven questions. Her knowing decision to conceal these facts 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 made efforts to correct the answers on her application. 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 negative security implications of initial dishonesty on a security clearance application.⁹ AG ¶ 17(a) cannot be applied.

Applicant failed to disclose that she had unpaid judgments, debts that were in collection, debts that were charged off, and a foreclosed mortgage, even though she was aware of their status when she completed the application. At several times during her investigation, Applicant gave different reasons why she hid her debts: that she hurried through the application, that she did not understand the questions, or that she followed her manager's advice to conceal her debts. At the hearing, she could not explain why she did not mention the manager's advice when she submitted her Answer to the SOR. After concealing this information, Applicant signed a certification that her answers were truthful. Her failure to be forthright with the Government during her security clearance investigation is not minor. 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 made some efforts to meet her financial obligations when she established a payment plan on one large debt, and reduced it by almost half, and recently paid two small debts. However, she made little consistent effort on any other debts before the security process began in 2012. She has a substantial net remainder

⁹ ISCR Case No. 02-23073 at 3 (App. Bd. Mar. 20, 2004).

of more than \$600 per month from her job that she has had since 2010. Other than one debt, she has not established a viable plan or shown a track record of consistent payments on her other debts.

When Applicant completed her security clearance application in 2010, she failed to inform the government of her true financial situation. During the investigation process, she gave conflicting reasons for her falsification. Applicant was a mature and experienced adult in 2010 when signed a statement that she would be honest and truthful in completing the application. Nevertheless, she knowingly failed to disclose her substantial 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

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| Paragraph 1, Guideline F | AGAINST APPLICANT |
| Subparagraph 1.a | For Applicant |
| Subparagraph 1.b | For Applicant |
| Subparagraph 1.c | For Applicant |
| Subparagraph 1.d | Against Applicant |
| Subparagraph 1.e | Against Applicant |
| Subparagraph 1.f | For Applicant (duplicate) |
| Subparagraph 1.g | Against Applicant |
| Subparagraph 1.h | For Applicant |
| 2. Paragraph Guideline E | AGAINST APPLICANT |
| Subparagraph 2.a | Against 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