



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



In the matter of:)
)
 REDACTED) ISCR Case No. 11-09275
)
 Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the security concerns under the personal conduct guideline, but failed to mitigate the concerns raised by her financial problems. She inadvertently omitted information about being terminated from a temporary job three years ago on her recent security clearance application. However, her accumulation of over \$60,000 in delinquent debt and lack of action to resolve her debts raises doubt about her eligibility for access to classified information. Clearance is denied.

Procedural History

On August 29, 2012, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Applicant answered the SOR and requested a hearing (Answer).¹

¹ Applicant's Answer is undated. The Defense Office of Hearings and Appeals (DOHA) received it on September 28, 2012.

On November 14, 2012, Department Counsel indicated the Government was ready to proceed. I was assigned the case on November 29, 2012. After coordinating with the parties, I scheduled the hearing for January 16, 2013.

At hearing, Department Counsel offered Government Exhibits (Gx.) 1 through 5, which were admitted without objection. Applicant appeared at the hearing and testified. DOHA received the transcript (Tr.) on January 25, 2013.

Findings of Fact

Applicant is a 30-year-old human resources administrator, working for a federal contractor for the past two years. She earned her bachelor's degree in 2005. She is single with no children, but financially supports her 17 year-old half-sister and mother. Her sister does not receive support from her father and is a full-time student, while her mother is unable to work due to a medical disability. Applicant's current annual salary is \$46,000, but after paying her monthly expenses and providing for her family, she has no money left to address her delinquent accounts. (Tr. at 22-29, 33-38)

Applicant has eleven delinquent debts, primarily for uninsured medical expenses and student loans that are in default status. The eleven debts total over \$60,000 and remain unpaid. These debts are referenced in SOR, ¶¶ 1.a – 1.k. Applicant has attempted on two separate occasions to resolve her delinquent student loans, but was unable to rehabilitate them. She has not sought financial counseling. (Tr. at 22-25, 36-38; Answer)

Applicant submitted a security clearance application (SCA) in May 2011. She disclosed her delinquent debts and a petit larceny conviction for shoplifting, when she was a freshman in college in 2002. She fully discussed her debts and the shoplifting conviction during her background interview in June 2011. She also voluntarily disclosed having been fired from a temporary job with a financial services company (FSC) in 2010. Applicant explained that she was hired by a staffing agency, which placed her with the FSC. She had disclosed her shoplifting conviction on the job application with the staffing agency and was assured by the agency that they had informed the FSC of the conviction. Upon starting with the FSC, Applicant filled out another employment application and again disclosed her shoplifting conviction. A week later, she was informed by the FSC that her prior shoplifting conviction was a bar to her employment with the company. She returned to the staffing agency, which apologized profusely for their mistake. Applicant voluntarily left the staffing agency when she secured her current job. (Tr. at 29-32; GE 1-2)

Applicant inadvertently omitted the termination from the FSC on her SCA. As a human resources administrator, she understands the need to be upfront about any such matters on all applications and has repeatedly revealed her shoplifting conviction on numerous employment applications. Applicant is not proud of this incident, but has always been candid about her prior conviction. (Tr. at 29-32; GE 2)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to financial problems is articulated at 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.

One aspect of the concern is that an individual who is financially overextended may be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant's accumulation of over \$60,000 in delinquent debt raises this concern and establishes the following disqualifying conditions under AG ¶ 19:

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

An individual's past or current indebtedness is not the end of the analysis, because "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."² Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed 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 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;

² ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

(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 and provides documented proof to substantiate the basis of the dispute.

Applicant has valiantly taken on the added financial burden of supporting her ill mother and younger sister. However, in part due to this voluntary decision, she has not had the means to address her financial obligations. Notably, she defaulted on her student loans after graduating from college over seven years ago and, although she twice attempted to bring the loans current, was unable to pay on a consistent monthly basis to resolve the delinquency. Applicant's debts are on-going and she has yet to take the necessary steps to place her financial affairs in order. Accordingly, none of the mitigating conditions fully apply and Applicant's finances remain a concern.

Guideline E, Personal Conduct

The personal conduct concern is set forth at AG ¶ 15:

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 guideline notes several disqualifying conditions that could raise a security concern under AG ¶ 16, and only the following warrants discussion:

(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.

The security clearance process is contingent upon the honesty of all applicants. It begins with the answers provided in the SCA. An applicant should disclose any potential derogatory information. However, the omission of material, adverse information standing alone is not enough to establish that an applicant intentionally falsified his or

her SCA. Instead, an administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.³

Applicant did not deliberately fail to disclose her termination from a prior temporary job on her SCA. She voluntarily revealed her eleven-year-old shoplifting conviction on her employment applications with the staffing agency and the FSC. It was the staffing agency that failed to tell the FSC about Applicant's prior conviction, not Applicant. Furthermore, Applicant's testimony that she inadvertently omitted this employment termination from the SCA is fully consistent with the evidence. She voluntarily disclosed other more serious derogatory information on the SCA, including the shoplifting conviction and her past-due debts. She also voluntarily disclosed the employment termination during her background interview, and then fully answered questions posed by the agent and DoD adjudicators. Applicant's openness and responsiveness throughout the security clearance process is inconsistent with an individual who is attempting to deceive or mislead the Government about her employment history.

Additionally, I had an opportunity to observe Applicant's demeanor as she testified and questioned her myself. I found her credible. Therefore, I find that Applicant did not intentionally falsify her SCA and the allegation under the personal conduct guideline is decided in her favor.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).⁴ Applicant is a hard-working, family-oriented individual. Her debts are not a result of frivolous spending or other matters that would themselves raise a security concern. Rather, her debts are primarily related to uninsured medical expenses and the staggering cost of higher education. However, since graduating from college over seven years ago, Applicant has defaulted on her student loans and has yet to take action to resolve her financial situation, such as seeking financial counseling. Hopefully, she will take the necessary steps in the near future to put her financial house in order. Her selfless decision to place her younger sister and mother's wellbeing over her own speaks volumes as to her character and potential to place her security obligations above her own needs. However, at this time, Applicant's financial situation

³ See *generally* ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005); ISCR Case No. 02-15935 (Appl. Bd. Oct. 15, 2003).

⁴ The non-exhaustive list of adjudicative factors are: (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.

outweighs the favorable whole-person factors present in this case and continues to cast doubt regarding her eligibility for access to classified information.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

 Subparagraphs 1.a – 1.k: Against Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

 Subparagraph 2.a: For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant’s request for a security clearance is denied.

Francisco Mendez
Administrative Judge