



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



In the matter of:)
)
) ISCR Case No. 11-10437
)
Applicant for Security Clearance)

Appearances

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

01/31/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated personal conduct and financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 24, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR in writing on September 12, 2013, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on October 22, 2013. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns.

Applicant received the FORM on December 16, 2013. She responded with documents that were marked Applicant's exhibits (AE) A through E. The case was assigned to me on January 29, 2014. The Government exhibits included in the FORM (GE 1-5) and AE A through E are admitted without objection.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor. She has worked for her current employer since 2010. She seeks to retain her security clearance, which she has held since 2008. She has a bachelor's degree and additional education, but as of 2012, she had not obtained a post-graduate degree. She is engaged to be married. She does not have any children.¹

Applicant smoked marijuana in 2005. She described it as a one-time occurrence with friends from college. She denies any illegal drug use since that incident.²

Applicant submitted Questionnaires for National Security Positions (SF 86) in November 2008 and May 2012. Both SF 86s required her to disclose any illegal drug use within the previous seven years. She did not disclose her 2005 marijuana use on either SF 86. She was interviewed by an investigator from the Office of Personnel Management (OPM) in July 2012. Her marijuana use was not discussed. In March 2013, she revealed her marijuana use in response to a DOHA interrogatory request that stated: "Records indicate that you used marijuana in the past. Please provide the approximate dates and frequency of use below."³

Applicant denied that she deliberately failed to disclose her marijuana use on the two SF 86s. She wrote that "[t]he incident was so long ago that I blocked it or have forgotten about it."⁴ Applicant's denial lacks credibility. The first SF 86 was submitted less than four years after her marijuana use. I cannot accept that a woman of Applicant's education would simply forget that she smoked marijuana. I find that she intentionally provided false information about her marijuana use on her 2008 and 2012 SF 86s.

The SOR alleges four defaulted student loans for \$1,546; \$11,381; \$2,408; and \$5,764. Applicant admitted defaulting on the loans. On her May 2012 SF 86, she listed \$30,000 in delinquent student loans to the same financial institution alleged in the SOR, but she added: "I believe I made the payment in full through a third party. Still under investigation . . . disputing charges." Applicant's credit report from June 2012 listed four delinquent student loans totaling about \$31,000.⁵

¹ GE 1-3.

² Applicant's response to SOR; GE 3.

³ GE 1-3.

⁴ Applicant's response to SOR.

⁵ Applicant's response to SOR; GE 1, 4.

Applicant told the OPM investigator in July 2012 that she fell behind on her student loans after the loans were transferred to a different company without notification to her. When she received the bills from the new company, she did not pay them because she thought it might have been a scam. She stated that she was in the process of contacting the financial institution to determine who she should pay, and that she would then start making payments.⁶

Applicant responded to interrogatories In March 2013. She wrote that payment arrangements on the loans alleged in the SOR “are in progress.” She submitted forms indicating that in October 2012, the Internal Revenue Service (IRS) paid \$2,232 and \$2,650 from her income tax refund to the financial institution identified in the SOR. She also submitted a copy of an IRS form 1098-E (Student Loan Interest Statement), indicating that the financial institution received \$2,292 in interest during 2012.⁷

Applicant earned \$131,084 in 2012. On her personal financial statement, she reported monthly net income of \$7,089; total monthly expenses of \$1,221; and a net remainder of \$5,868.⁸ She remarked:

I live with my fiancé and he pays for the rent. My only expense is the home phone, car insurance, life insurance, and gasoline. Also, I do not have any credit cards.⁹

Applicant responded to the SOR in September 2013. She wrote that she had made several attempts to contact the financial institution to establish a payment plan, but she was unsuccessful. She was placed on hold for extended periods and her calls were disconnected.

When Applicant replied to the FORM, she established that in December 2013 the IRS paid the financial institution \$4,953 from her income tax refund. She indicated that after additional lengthy attempts, she finally was able to speak to a representative from the financial institution. She paid \$1,080 and established a payment plan. She indicated that an additional \$5,000 would be paid, and she anticipated all the loans would be paid within about three months.¹⁰

⁶ GE 3.

⁷ GE 3.

⁸ GE 3.

⁹ GE 3.

¹⁰ AE A-E.

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 are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the 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.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 intentionally provided false information about her marijuana use on her 2008 SF 86 and again on her 2012 SF 86. AG ¶ 16(b) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

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

(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;

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's denials that she intentionally provided false information about her marijuana use were not credible. There are no applicable mitigating conditions.

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant did not pay her student loans for several years. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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;
- (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 noted her defaulted student loans on her 2012 SF 86. She discussed them with the OPM investigator in July 2012, in response to interrogatories in March 2013, and in response to the SOR in September 2013. She had more than enough disposable income to start paying her student loans. She had a difficult time contacting

the financial institution, but she should have been more diligent. She receives less credit in mitigation for the payments made through seizure of her income tax refunds. See ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010). Her recent efforts and payment arrangements also require greater scrutiny. The Appeal Board has held that “intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches.” See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

Applicant did not make a good-faith effort to pay her debts. Her financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. There are no applicable mitigating conditions.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all relevant circumstances. The 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 eligibility for 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 have incorporated my comments under Guidelines E and F in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant lied about her drug use on her 2008 and 2012 SF 86s. Despite a substantial disposable income, she shirked her financial obligations and defaulted on her student loans. I have concerns about her judgment, trustworthiness, and honesty.

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. I conclude Applicant has not mitigated personal conduct and financial considerations security concerns.

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:	Against Applicant
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraphs 2.a-2.b:	Against 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge