



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



In the matter of:)	
)	
)	ISCR Case No. 11-11000
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/25/2013

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 February 8, 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 submitted a notarized response to the SOR on April 8, 2013, and requested a hearing before an administrative judge. The case was assigned to me on May 23, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 23, 2013, scheduling the hearing for June 11, 2013. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 16 were admitted in

evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted documents that were marked AE D through H and admitted without objection. Correspondence about the additional exhibits is marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on June 17, 2013.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. She seeks to retain her security clearance. She is married with two children, and she is pregnant expecting her third child. She also has three stepchildren.¹

Applicant graduated from high school in 1999. She then attended a community college until about 2001, but she did not obtain a degree. Since 2007, she has attended on-line classes through three different colleges, but she has not obtained a degree from any of them.²

Applicant submitted resumes for employment in the U.S. Government in about 2003 and 2005. In both resumes, she listed that she attended a university that she has never attended (X University). In her 2003 resume, she wrote: "Graduation date 2004 of Bachelor of Arts." In her 2005 resume, she wrote: "Graduation date December 2005 of Bachelor of Arts."³

In 2007, Applicant lost her job with a government agency for falsifying her timecards. Applicant testified that she was a probationary employee. She stated that she actually worked the hours, but during a different pay period.⁴

Applicant was unemployed for a period in 2008, and she received unemployment compensation. She went back to work in April 2008. She did not notify the unemployment compensation office that she was working, and she continued to receive unemployment compensation for about two and a half weeks. The overpayments were discovered in an audit in May 2012. She was overpaid \$954, which was recovered through a recoupment of \$120 and an offset of \$834. Applicant stated that she did not understand the process, and she did not know when she had to notify the unemployment compensation office that she had returned to work.⁵

¹ Tr. at 48-49, 52, 63-64; GE 1, 2.

² Tr. at 22-26, 32, 44-45, 55; GE 2: AE F-H.

³ Tr. at 34-35, 54, 64; GE 9, 10; AE C.

⁴ Tr. at 37-38, 55-58; Applicant's response to SOR; GE 1, 2.

⁵ Tr. at 38-39, 58-62; GE 2, 11; AE C.

Applicant submitted a Questionnaire for Public Trust Positions (SF 85P) in April 2008. Under education, she listed her high school and that she attended X University from 1999 until May 2007. She also listed that she received a “Degree” in May 2007.⁶

Applicant was interviewed for her background investigation by an Office of Personnel Management (OPM) investigator on June 10, 2008. A signed statement was not taken, but the interview was summarized in a report of investigation (ROI). She told the investigator that she did not graduate from X University in May 2007. She stated that she thought she was going to graduate. However, a university director told her in April 2006 that she needed three additional courses to graduate. The OPM investigator contacted Applicant by telephone on June 26, 2008. She admitted that she had never attended X University. She told the investigator that X University accepted her for enrollment in August 2007, but she did not attend the college because she found out that she would lose credits if she enrolled there.⁷

Applicant submitted at least two resumes to her former employer in about 2010. Her former employer reformatted the resumes and made the resumes available to subcontractors who chose to utilize Applicant’s services. In one resume, Applicant stated that she attended X University and received a “B.A. 05/2008.” In the second resume, she stated that she attended one of the on-line universities that she actually has attended, but she again stated that she received a “B.A. 05/2008.”⁸

Applicant denied intentionally providing false information about her education on her resumes and during the security clearance process. She stated that she attended X University because that is where she intended to attend. She stated she listed that she obtained a bachelor’s degree because that is when she anticipated that she would graduate. She also indicated that she was undergoing stress from some medical procedures, and she did not look as carefully at the forms as she should have.⁹ I did not find Applicant’s testimony credible. I find that she intentionally provided false information about her education on resumes submitted in 2003, 2005, and 2010; on her 2008 SF 85P; and during her OPM interview in 2008.

Applicant was asked if she listed on her resume for her current employer that she had a degree and if her current employer believes she has a degree. She answered she “probably” did list a degree and her employer “probably” believes she has a degree.¹⁰

⁶ GE 12.

⁷ Tr. at 39-40; GE 2.

⁸ Tr. at 64-65, 81; GE 2, 13-15; AE C.

⁹ Tr. at 32-36, 40, 66-68, 83; AE C.

¹⁰ Tr. at 65-68. Any false statement that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant’s credibility, in the application of mitigating conditions, and in analyzing the “whole person.”

Applicant has had financial problems for several years. Her husband has been unemployed since December 2011.¹¹

The SOR alleges eight past-due student loans with balances totaling about \$28,000, a charged-off credit union debt (\$4,787) and a mortgage loan that was \$9,774 past due with a \$149,000 balance. All of the debts appear on at least one credit report.

Applicant admitted owing the student loans, but they are deferred because she is attending college. She submitted a document establishing that she has 12 student loans in deferment until October 2015. The balance of the 12 loans is \$45,820.¹²

Applicant admitted owing the \$4,787 charged-off credit union debt. On May 14, 2013, she agreed to pay \$100 per month on the account. She paid \$100 on June 10, 2013.¹³

Applicant bought a house for about \$156,000 in 2008. The house was financed with a mortgage loan in her name. Applicant and her family moved to a larger house that was purchased by her husband in about 2011. She attempted to sell the first house, but it had depreciated in value, and she was unable to sell it for what was owed on the mortgage loan. She attempted to rent the property, but did not have tenants who paid the rent on time. She has not paid the mortgage loan in almost two years. She is seeking a loan modification of the mortgage.¹⁴

Applicant has not received formal financial counseling. She indicated that her finances are tight, but she is able to pay her bills.¹⁵

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

¹¹ Tr. at 23-24, 48, 53-54.

¹² Tr. at 22-25, 41-45; GE 3-5; AE C, E.

¹³ Tr. at 22-23, 45-46; Applicant's response to SOR; GE 3-6; AE C.

¹⁴ Tr. at 26-31, 46-50; Applicant's response to SOR; GE 3-6; AE A, B.

¹⁵ Tr. at 54, 62-63.

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 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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her financial obligations. 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;
- (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 were caused or aggravated by her husband's unemployment. That is beyond her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

In about 2011, Applicant and her family moved to a larger house before she sold the house she bought in 2008. She is seeking a loan modification, but she has not paid the mortgage loan in almost two years. Her student loans of about \$45,000 are in deferment until 2015. She has made one \$100 payment towards the \$4,787 charged-off credit union debt.

Applicant's student loans are temporarily resolved. However, I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her finances are not yet under control. 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. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. AG ¶ 20(c) is applicable to the deferred student loans. It is not applicable to the other debts. I find that financial concerns remain despite the presence of some mitigation.

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 conditions are 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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant intentionally provided false information about her education on resumes submitted in 2003, 2005, and 2010; on her 2008 SF 85P; and during her OPM interview in 2008. AG ¶¶ 16(a) and 16(b) are applicable.

Applicant lost her job with a government agency in 2007 for falsifying her timecards. In 2008, she did not notify the unemployment compensation office that she was working, and she continued to receive unemployment compensation for about two and a half weeks. Her conduct showed poor judgment and an unwillingness to comply with rules and regulations. It also created a vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(b), 16(c), 16(d), and 16(e) are 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 education were not credible. She admitted that she "probably" listed on her resume for her current employer that she had a degree and that her employer "probably" believes she has a degree. 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 my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has unresolved financial problems, and she has been consistently untruthful about her education since 2003.

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.h:	For Applicant
Subparagraphs 1.i-1.j:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraphs 2.a-2.h:	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