



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 11-12680
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

08/27/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not falsify her security clearance application as alleged under the personal conduct guideline, but she failed to mitigate the security concerns arising from her financial situation. She has accumulated over \$45,000 in delinquent debt. Despite being aware of the Government's concerns since 2011, she has taken no action to resolve her financial situation. Clearance is denied.

Procedural History

On February 13, 2013, 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).

On May 13, 2013, Department Counsel indicated the Government was ready to proceed with a hearing in this matter. Scheduling of the hearing was delayed due to

budgetary constraints. On July 2, 2013, a notice of hearing was issued scheduling Applicant's hearing for July 29, 2013.¹

The hearing was held as scheduled. Department Counsel offered Government Exhibits (Gx.) 1 through 7, which were admitted without objection. Applicant appeared at the hearing and testified. I left the record open to provide her additional time to submit documents. She did not submit any matters post-hearing. DOHA received the hearing transcript (Tr.) on August 6, 2013, and the record closed on August 23, 2013.²

Findings of Fact

Applicant, 52, is single and has two children, 15 and 19 years old. Her children, as well as her ailing mother and disabled brother-in-law, live with her. She financially supports her children and mother. She has been working for a defense contractor and has held a security clearance since 1982. She is employed as an engineer and earns approximately \$85,000 annually. (Tr. at 26-29)

The SOR alleges that Applicant owes over \$45,000 for 14 delinquent debts. She admits seven of the SOR debts, totaling over \$24,000. These seven debts are for credit cards that Applicant stopped paying between 2009 and 2010. Applicant submitted no evidence to substantiate her dispute of the remaining debts. The credit reports and other evidence admitted at hearing establish all 14 debts. (Tr. at 29-44; Gx. 3-7)

Applicant has been aware of her delinquent debts since at least August 2011, when she was interviewed as part of her periodic reinvestigation. (Gx. 3) She promised the Government that she would look into and resolve her debts. (Gx. 3; Answer) She took no action to investigate or resolve her delinquent debts because she "never got around to it." (Tr. at 55)³

Applicant's recent credit report reveals an additional debt in collection status for over \$6,000. (Gx. 7 at 1) At hearing, Applicant testified that she had yet to file her federal tax return and that over the past several years she has routinely filed her tax returns late.⁴ (Tr. at 57) Applicant claims that her finances are in disarray due to the added expense and time spent caring for her ailing mother. (Tr. at 63-65) She has not sought or received financial counseling. (Tr. at 50-51)

In July 2011, Applicant submitted her most recent security clearance application (SCA). In response to questions regarding her finances, Applicant only disclosed a

¹ Applicant received actual notice of her hearing via e-mail on June 12, 2013.

² The record was initially held open until August 15, 2013, but Applicant requested additional time to submit post-hearing documents. I granted the request and set a firm deadline of August 23, 2013.

³ See also Tr. at 38-39, 43, 54, 65-66.

⁴ Applicant's new debt in collection status and failure to file her tax returns on a timely basis were not alleged in the SOR, and are only being considered in assessing her mitigation case.

\$1,500 federal tax debt. She had several other bad debts that were either over 90 days delinquent or in collection status, but did not disclose them on the SCA. Applicant testified that she only listed the tax debt because it was the only bad debt she was certain of at the time. Also, she rushed to complete the SCA, without paying it much attention. (Tr. at 74-78; Gx. 1)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions that are to be used in evaluating an applicant’s eligibility for access to classified information. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge must apply the guidelines in a common sense manner and take into account the whole person in reaching a fair and impartial decision. An administrative judge should consider all available and reliable information about the person, past and present, favorable and unfavorable.

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 obtain a security clearance.

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 is merely an indication an applicant has not met the strict guidelines the President and the Secretary of Defense have 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 \$45,000 in delinquent debt raises this concern. This record evidence also establishes the disqualifying conditions listed at AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(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.”⁵ 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;

⁵ 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).

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

None of the mitigating conditions apply. Applicant has been aware of the Government's concerns regarding her finances for three years and, despite repeated promises to resolve her numerous delinquent debts, has taken no action to resolve her debts. Although Applicant's poor financial situation is understandable to a point, as she is financially supporting her children and ailing mother on her salary alone, she has failed to act responsibly under the circumstances. She presented no evidence of changed spending habits, or other steps to reduce her expenses or address her longstanding debts. She has been employed full time, earning a good salary and continues to amass bad debt. In addition to not paying her financial obligations, Applicant also refuses to file her federal tax returns on time. Applicant's disregard for her financial obligations raises the concern that she may similarly, either carelessly or deliberately, disregard her security obligations.

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 SOR alleges that Applicant deliberately falsified her SCA when she failed to disclose her numerous delinquent debts in response to relevant questions regarding her finances. It is axiomatic that the security clearance process depends upon the honesty of all applicants and begins with the answers provided in the SCA. 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.⁶

Applicant did not deliberately fail to disclose her delinquent debts on her SCA. Although she displayed a level of carelessness in filling out her SCA that is inconsistent with what is expected of all applicants, much less one with over 30 years as a defense contractor, such carelessness does not rise to the level of deliberate falsification. Therefore, the falsification allegation under Guideline E is decided in Applicant's favor.⁷

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).⁸ I specifically considered Applicant's over 30 years of service as a defense contractor and that she has held a clearance during the entire time without issue. However, she has accumulated a substantial amount of delinquent debt and, despite promising the Government on a number of occasions to look into and resolve her debts, has failed to take any action. Even though Applicant has held a security clearance for over 30 years, she either is unaware of the strict requirements for maintaining a security clearance or is unconcerned with such requirements. In either case, Applicant failed to meet the heavy burden of mitigating the security concerns at issue and the clearly consistent standard. Consequently, Applicant's financial situation

⁶ See generally ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005); ISCR Case No. 02-15935 (Appl. Bd. Oct. 15, 2003).

⁷ Although Applicant's omission was not deliberate, the disregard she exhibited in fulfilling her obligation to provide full and accurate responses to the questions posed in the SCA is disconcerting. However, she was not provided notice that such carelessness could rise to the level of disqualifying conduct under Guideline E and further delaying the resolution of this matter to provide such notice would not serve the ends of the industrial security clearance program.

⁸ 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 raises doubt about her continued 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.n: **Against Applicant**

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

 Subparagraph 1.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 continued access to classified information. Applicant’s request for a security clearance is denied.

Francisco Mendez
Administrative Judge