



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



In the matter of:)
)
) ISCR Case No. 11-13473
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

September 27, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a long history of financial indebtedness. She currently has 10 delinquent debts that total approximately \$45,771, and has failed to submit proof that any of them are satisfied. In addition, she falsified information on her Security Clearance Application. She has not mitigated the Financial Considerations and Personal Conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 7, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 27, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, Financial Considerations; and E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised

adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing in an undated submission, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on July 10, 2013. A complete copy of the file of relevant material (FORM) was received by Applicant on August 1, 2013. She was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. As of August 31, 2013, she had not responded. The case was assigned to me on September 17, 2013.

Findings of Fact

Applicant is a 56-year-old employee of a defense contractor. She has worked as a contractor since 2000. She was married in September 1994, but divorced in June 2001. She resides with a cohabitant. She failed to identify any children on her e-QIP, although in her response to Interrogatories, she refers to an adult daughter. (Item 4; Item 5.)

Financial Considerations

The SOR alleges 10 delinquent debts totaling \$45,771, all of which were substantiated by the credit reports in the record. Applicant admitted all of her debts as alleged in the SOR. Applicant's debts are as follows:

Applicant is indebted, as stated in allegation 1.a, on an account placed for collection in the amount of \$215. Applicant explained that she incurred this debt as a result of helping her daughter pay for schooling. She promised to pay this debt in her Answer, but failed to present any evidence she acted upon this promise. Credit Reports reflect this debt has been delinquent since September 2011. (Answer; Item 5; Item 6.)

Applicant is indebted, as stated in allegation 1.b, on an account placed for collection in the amount of \$1,472. Applicant explained that she incurred this debt as a result of helping her daughter pay for a cell phone. She promised to pay this debt in her Answer, but failed to present any evidence she acted upon this promise. Credit Reports reflect this debt has been delinquent since January 2011. (Answer; Item 5; Item 6.)

Applicant is indebted, as stated in allegation 1.c, on an account placed for collection in the amount of \$3,527. Applicant explained that she incurred this debt as a result of helping her daughter pay for her apartment. She promised to pay this debt in her Answer, but failed to present any evidence she acted upon this promise. Credit Reports reflect this debt has been delinquent since January 2012. (Answer; Item 5; Item 6.)

Applicant is indebted, as stated in allegation 1.d, on an account placed for collection in the amount of \$950. Applicant explained that she incurred this debt as a result her daughter's failure to make a rent payment on an apartment that Applicant was

helping her lease. She promised to pay this debt in her Answer, but failed to present any evidence she acted upon this promise. Credit Reports reflect this debt has been delinquent since December 2011. (Answer; Item 5; Item 6.)

Applicant is indebted, as stated in allegation 1.e, on an account placed for collection in the amount of \$32,560. Applicant explained that she incurred this debt as an authorized user on her significant other's account. She indicated that her significant other had filed "something thru the courts," but failed to provide any further information regarding this debt. Credit Reports reflect this debt has been delinquent since December 2009. (Answer; Item 5; Item 6; Item 7.)

Applicant is indebted, as stated in allegation 1.f, on an account placed for collection in the amount of \$254. This debt was for a gas bill. Applicant promised to pay this debt in her Answer, but failed to present any evidence she acted upon this promise. Credit Reports reflect this debt has been delinquent since July 2011. (Answer; Item 5; Item 7.)

Applicant is indebted, as stated in allegation 1.g, on an account placed for collection in the amount of \$1,168. This debt was for a credit card. Applicant promised to pay this debt in her Answer, but failed to present any evidence she acted upon this promise. Credit Reports reflect this debt has been delinquent since October 2008. (Answer; Item 5; Item 7.)

Applicant is indebted, as stated in allegation 1.h, on an account placed for collection in the amount of \$144. This debt was for an electricity bill. Applicant promised to pay this debt in her Answer, but failed to present any evidence she acted upon this promise. Credit Reports reflect this debt has been delinquent since June 2011. (Answer; Item 5; Item 7.)

Applicant is indebted, as stated in allegation 1.i, on an account placed for collection in the amount of \$5,378. This debt was for a delinquency after Applicant's vehicle was repossessed. Applicant promised to follow up on this debt in her Answer, but failed to present any evidence she acted upon this promise. Credit Reports reflect this debt has been delinquent since October 2008. (Answer; Item 5; Item 7.)

Applicant is indebted, as stated in allegation 1.j, on an account placed for collection in the amount of \$103. Applicant claimed that this debt was paid off in her Answer, but failed to present any evidence supporting her statement. Credit Reports reflect this debt has been delinquent since January 2006. (Answer; Item 5; Item 7.)

Personal Conduct

On July 7, 2011, Applicant completed her e-QIP. On that Application, she was asked: "Section 22. Police Record e. Have you EVER been charged with any offense(s) related to alcohol or drugs?" Applicant answered this question, "No." However, the record shows that in October 2003, Applicant was charged with Driving Under the

Influence (DUI). She admitted that she was charged with this offense in her Answers to the Interrogatories. (Item 4; Item 5.) In her Answer, she indicated:

I did not deliberately not want to give this information to you, I was told this was off my record, Really did not understand the 7 year. When asked during questioning I said I had a DUI but was never arrested. (Answer)

Applicant was also asked: "Section 18: Relatives. Give the full name and other requested information, if applicable, for each of your relatives." She failed to fully disclose relatives, such as her daughter. In her report of investigation, which she adopted as her statement on December 18, 2012, indicated that "it became too much for her to list all other relatives," so she did not include them. (Item 5 at 10.)

Further, in "Section 26: Financial Record e. Have you had a judgment entered against you? f. Have you defaulted on any type of loan? g. Have you had bills turned over to a collection agency? h. Have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? m. Have you been over 180 days delinquent on any debt(s)? n. Are you currently over 90 days delinquent on any debt(s)?" Applicant answered all of the financial questions, "No." Clearly, the answers to these questions should have been, "Yes," as she has numerous delinquent accounts, as set out above under Financial Considerations. (Item 1; Item 6; Item 7; Item 8.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines. (AG.) 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to 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 has accumulated a number of delinquent debts and is unable or unwilling to pay her obligations. Her financial problems have been ongoing since 2006, without resolution. To date, Applicant has been unable to satisfy any of her past-due accounts. The evidence supports application of disqualifying conditions AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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;

(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 current and on-going, as evidenced by the credit reports. She has not presented evidence that she has taken any actions on her outstanding debt. Her failure to address her debts fails to show good judgment. She has not addressed her debts in a responsible manner. She has not received counseling for her financial problems and she does not appear to have her financial delinquencies under control. Finally, Applicant has not presented evidence that she contested her outstanding debts. None of the above mitigating conditions apply.

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline is set out in 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.

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 failed to list her debts, her relatives, and her DUI charge on her 2011 SCA. She clearly knew she had debts that had not been resolved, relatives that were not identified, and an alcohol related arrest. Yet, she willfully chose not to include them on the SCA. This behavior indicates questionable judgment and untrustworthiness.

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.

After considering the mitigating conditions outlined above in AG ¶ 17, it is apparent that none of them apply. Applicant did not make prompt or good-faith efforts to correct her falsification or concealment. She provided no information that indicates she was ill-advised in completing her SF 86. Falsifying information is a serious offense and Applicant has done nothing to show that similar lapses in judgment are unlikely to recur. Further, she fails to take responsibility for her actions. She has not provided information in this record to show that she has met her burden of proof for her personal conduct.

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 the 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 F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but warrant additional comment. Applicant is 56 years old. She is clearly aware of the need to be financially responsible. She accumulated substantial debts and has not shown that she has a plan to resolve her financial situation. An applicant is not required to be debt-free, or establish that she paid every debt. But she must demonstrate that she has established a plan to resolve her debts and that she is taking action to implement that plan. Here, Applicant has not established such a plan, and remains indebted for \$45,771. In addition, she has not been forthright with the Government on her e-QIP.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Financial Considerations or Personal Conduct 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:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d:	Against Applicant
Subparagraphs 1.e:	Against Applicant
Subparagraphs 1.f:	Against Applicant
Subparagraphs 1.g:	Against Applicant
Subparagraphs 1.h:	Against Applicant
Subparagraphs 1.i:	Against Applicant
Subparagraphs 1.j:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a.:	Against Applicant
Subparagraphs 2.b:	Against Applicant
Subparagraphs 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 grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge