



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 11-15002
)	
Applicant for Security Clearance)	

Appearances

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

07/25/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the financial considerations and personal conduct concerns. Her finances are under control, and she did not provide false answers in response to questions on her security clearance application or in response to questions posed during her background interview. Clearance is granted.

Statement of the Case

On July 25, 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). On September 27, 2012, Applicant answered the SOR and requested a hearing. On May 10, 2013, I was assigned Applicant's case. After coordinating with the parties, I scheduled the hearing for June 13, 2013.

At hearing, Department Counsel offered Government Exhibits (Gx.) 1 through 6. All the exhibits were admitted into evidence without objection, except the first three pages of Gx. 5. The challenged exhibit pages were not admitted because they constitute a DoD report of investigation and the Government did not offer a witness to

authenticate said portion of the exhibit. See Directive, Enclosure 3, ¶E.3.1.20. Also at hearing, the SOR was amended without objection to correct several typographical mistakes.¹ (Tr. at 13-20, 55-56)

Applicant appeared at the hearing, testified, and offered Applicant's Exhibits (Ax.) A and B, which were admitted without objection. At Applicant's request, I left the record open to provide her time to gather and submit additional matters. She timely submitted Ax. C through E, which were also admitted without objection. The transcript (Tr.) was received on June 20, 2013, and the record closed on June 21, 2013.

Findings of Fact

Applicant, 53, is twice divorced, has an adult child, and has been living with her common-law husband since 2007. She has primarily worked as a federal contractor since 1999. She has suffered periods of unemployment in the past ten years. She was employed by federal contractors from June 2009 to March 2011, and was then unemployed for about three months before being hired by her current employer in June 2011. (Tr. at 38-40, 49-50, 68-69; Gx. 1 – 2)

Applicant had financial problems in the past. Her debts were discharged through bankruptcy in 1993. She again found herself in financial trouble in 1995, when her ex-husband abandoned their home and left her with several joint debts. She resolved a number of the marital debts, but two car-related debts that her ex-husband is responsible for paying were listed on her July 2011 credit report. Applicant has filed civil court actions to force her ex-husband to pay the debts that he is responsible for paying. However, even after being ordered by a court to pay the debts, Applicant's ex-husband refuses to resolve them. Applicant has also filed disputes with the credit reporting agencies regarding these two car debts. The larger of the two debts for over \$10,000 no longer appears on her credit report; while the other debt is for less than \$275. Applicant lives within her means and has not accumulated any other delinquent debt since her divorce in 2007. (Tr. at 31-35, 40-42; Gx. 2 – 4; Ax. A, Ax. C – D)

Applicant has a history of substance abuse dating back to the 1980s. She was cited in 1984 for driving under the influence with a blood alcohol content level of .22. (Gx. 5 at 182) She was arrested and charged in 1988 for possession of drug paraphernalia. The police report states that Applicant was arrested after a "plastic object containing a white powder residue fell from her purse to the floor board of the vehicle. The object is commonly used to snort cocaine." (Gx. 6) The charge was ultimately dismissed. Applicant has insisted throughout her background investigation that she was not arrested as a result of the 1988 incident. (Tr. at 54-61; Ax. B) She has had no issues involving alcohol or drugs for over seven years. (Tr. at 77-81; Gx. 2)

Applicant became a confidential informant (CI) in the summer of 2000. She used cocaine while serving as a CI, in order not to blow her cover. She used cocaine on approximately five occasions. She then voluntarily admitted herself to a hospital for

¹ Pen-and-ink changes were made to the SOR to reflect the amendments.

counseling to deal with her substance abuse and mental health issues, which were a result of years of suffering from domestic abuse. She has not used illegal drugs since this incident 13 years ago. (Tr. at 51-54, 70-73, 77-78; Gx. 2 at 262, 269, 275)

Applicant submitted her security clearance application (SCA) in July 2011. Although she has worked as a federal contractor since 1999, this was her first application for a security clearance. Applicant omitted her past criminal charges related to alcohol and drugs. Applicant credibly testified that she did not believe disclosure was required because most of the charged offenses were over ten years old and misdemeanors. As for a citation she received in April 2006 for serving alcohol to a minor, Applicant did not believe that the citation amounted to an alcohol-related offense that she had committed, as opposed to the minor she inadvertently served. (Tr. at 61-68, 74-77; Gx. 1)

In August 2011, Applicant voluntarily agreed to a security clearance background interview. When asked whether she had used illegal drugs in the past, Applicant disclosed her past marijuana use, but did not disclose her use of cocaine eleven years earlier. Applicant testified that she did not recall using cocaine when questioned by the investigator, because she had blocked out that portion of her life when she was the victim of domestic abuse. Applicant went on to emotionally testify about the physical and mental abuse she suffered almost on a daily basis from her ex-husband. She only remembered using cocaine when asked in an interrogatory about counseling she had previously received. In addition to voluntarily providing the counseling records, Applicant revealed her past cocaine use. She revealed this information to the Government in April 2012. No evidence was presented that the Government was aware of Applicant's cocaine use prior to her voluntary disclosure of the information in her interrogatory response. (Tr. at 51-54, 73; Gx. 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. Furthermore, “[o]nce a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.” ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (citing *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991)).

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.

Applicant’s past financial problems and the two delinquent debts listed in her July 2011 credit report raise this concern. This record evidence also raises the applicability of the disqualifying conditions listed at AG ¶¶ 19 (a), inability or unwillingness to satisfy debts, and 19(c), a history of not meeting financial obligations.

Applicant mitigated the security concerns arising from her past financial problems. She established that the two delinquent car debts appearing on her credit report were debts attributable to her former husband. More importantly, Applicant established that her past financial problems no longer casts doubt on her current reliability, trustworthiness, or good judgment. She resolved several debts that she accumulated during her marriage prior to the issuance of the SOR, and has remained financially stable since her divorce in 2007. This track record of financial responsibility establishes the following mitigating conditions 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;

(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.

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.

Adverse employment history and falsification of federal forms. (SOR ¶¶ 2.a – 2.d)

The SOR alleges that Applicant was fired from a job under unfavorable circumstances in 1989, and that she later intentionally failed to disclose this adverse employment information on federal forms she filled out in 1989 and 1990. The SOR

goes on to allege that Applicant was fired from a job with a federal contractor in 2009. Applicant was not fired, but quit her job in 1989. Thus, she did not falsify the federal forms she later submitted in 1989 and 1990. Her job termination in 2009 was not due to misconduct or other issue raising a security concern. Accordingly, SOR ¶¶ 2.a – 2.d are decided in Applicant's favor.

Alleged falsification of SCA and background interview responses. (SOR ¶¶ 2.e – 2.g)

By contrast, Applicant's failure to disclose her cocaine use during her background interview and, to a lesser degree, her purported misrepresentation of the 1988 arrest does raise a security concern under Guideline E. Furthermore, the omission of her past alcohol and drug-related charges in response to relevant questions on her SCA also raises a concern. Specifically, these alleged falsifications raise the potential applicability of the following disqualifying conditions at AG ¶ 16:

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

The security clearance process is contingent upon the honesty of all applicants. It begins with the answers provided in the SCA and continues throughout the security clearance process. 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. An omission is not deliberate if the person genuinely forgot the information requested, inadvertently overlooked or misunderstood the question, or sincerely though the information did not need to be reported. An administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.²

Applicant did not deliberately fail to disclose her cocaine use in 2000, when asked during her 2011 background interview about her past drug use. She is a survivor of domestic abuse and her memory from that time period is understandably muddled. She did voluntarily reveal to the investigator other adverse information, including other illegal drug use. More importantly, after being asked to provide information about counseling she had received, Applicant recalled her cocaine use and immediately revealed the adverse information to the Government. By doing so, she self-reported the adverse information and corrected her prior omission. Prior to this disclosure, there was no evidence presented that the Government was aware of Applicant's cocaine use or

² See generally ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005); ISCR Case No. 02-15935 (Appl. Bd. Oct. 15, 2003).

confronted her with relevant information that led to the disclosure.³ Furthermore, Applicant fully discussed at hearing her past history of substance abuse and related security concerns.⁴ Such full disclosure and cooperation is what is expected of those granted access to classified information, and further demonstrates that she is not attempting to hide her past drug use.

Applicant also did not attempt to mislead the investigator when she mistakenly stated that she had not been arrested in 1988. Applicant genuinely believes that she was not arrested and, as the matter was later dismissed and took place over 20 years ago, her confusion is reasonable.

Applicant's omission of her past alcohol and drug-related charges in response to relevant questions on the SCA was not intentional. She was focused on disclosing any issues in the past ten years and most of the charges are from the late 1980's and early 1990's. As for the 2006 citation for serving alcohol to a minor, Applicant sincerely believes that the citation does not qualify as an alcohol-related offense that she (as opposed to the minor) committed. I found her testimony credible. Consequently, SOR ¶¶ 2.e – 2.g are also decided in Applicant's 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).⁵ I incorporate the above analysis herein and note some additional whole-person factors. Applicant has overcome a history of substance abuse and domestic abuse. She has been a responsible, law-abiding citizen for over ten years and there is no reason to doubt that she will continue to exercise good judgment in the future. Her past history of financial difficulty and questionable conduct no longer casts doubt on her current reliability, trustworthiness, or good judgment. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for a security clearance.

³ The fact that Applicant revealed her past cocaine use after being asked to provide information about counseling does not undermine her voluntary disclosure. Such inquiry falls far short of confronting an individual with the relevant facts about the adverse information. See AG 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts).

⁴ Applicant's substance abuse history, including illegal drug use while working as a federal contractor, was not alleged as a security concern. However, I have considered this record evidence in assessing Applicant's case in mitigation and the whole-person factors.

⁵ 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.

Formal Findings

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

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

 Subparagraphs 1.a – 1.c: For Applicant

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

 Subparagraphs 2.a – 2.g: For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant’s request for a security clearance is granted.

Francisco Mendez
Administrative Judge