



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



In the matter of:

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) ISCR Case No. 14-05850
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)

Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

August 16, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on March 20, 2013. On January 25, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, J and E for Applicant. The action was taken under Executive Order 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 adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on February 7, 2015, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on November 3, 2015. Applicant did not respond to the FORM. The case was assigned to me on March 28, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in Paragraphs 1.a.~1.e., 1.k. 1.l., 2.b., 2.c., 3.a. and 3.b of the SOR, with explanations. She denied the factual allegations in Paragraphs 1.f.~1.j. of the SOR, and failed to respond to Paragraphs 2.a. and 3.c., which I take as denials.

Applicant is a 29-year-old "Telecommunication Construction Contractor," who has worked for a government contractor since July of 2012. (Item 3 at pages 5 and 15.)

Guideline F - Financial Considerations

1.a.~1.c. and 1.k. Applicant admits that she is indebted to Creditors A, B, C and K for past-due debts totaling about \$2,817. As she offers nothing further in this regard, these allegations are found against Applicant.

1.d. and 1.e. Applicant admits that she is indebted to Creditor D for two past-due debts totaling about \$557. As she offers nothing further in this regard, these allegations are also found against Applicant.

1.f.~1.j., 1.l., 2.a. and 3.c. Applicant denies that she is indebted to Creditor F for five past-due debts totaling about \$11,603. In support of her averment, she offers a letter from Creditor F showing a "Balance Due \$0.00." She further admits that these past-due debts were the result of "five bad checks" drawn to Creditor F in 2007. As these Financial Considerations, and related Criminal and Personal Conduct, occurred nearly ten years ago; and since she is now current with Creditor F, these allegations are found for Applicant.

Guideline F - Criminal Conduct

2.b. and 2.c. Applicant admits that she used marijuana "intermittently" for an eight year period from 2003~2011. She also admits that she used cocaine "once a month 2~3 times" in 2011. This is evidenced by admissions on her e-QIP. (Item 3 at page 39.) This admitted Criminal Conduct occurred more than four years ago; and as such with the passage of so much time, I find that it is not of present security significance.

Guideline E - Personal Conduct

3.a. Applicant admits that she failed to disclose her complete "Financial Record" in answer to Section 26 on her March 2013 e-QIP. She avers that she "misunderstood/misread the question," without further explanation. The posited questions are rather straightforward and ask, in part, "in the past seven (7) years, [have] you defaulted on any type of loan? . . . [have] you had bills or debts turned over to a collection agency? . . . [and have] you . . . been over 120 days delinquent on any debt not previously entered"? Applicant's explanation is not believable; and as such, this allegation is found against Applicant.

3.b. In about September of 2007, Applicant was arrested for Harassment, to which she subsequently pled guilty. (Item 4 at pages 5~6.) She admits that she failed to disclose her "Police Record" in answer to Section 22 on her March 2013 e-QIP. She avers that she "did not list it because the record was expunged." The posited questions, again, are rather straightforward and ask, in part, "in the past seven (7) years, have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you"? No mention of an exception for an expungement is mentioned. I find this to be a wilful falsification; and as such, this allegation is found against Applicant.

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 useful 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, these guidelines are applied in conjunction with the factors listed in AG Paragraph 2(a) describing the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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 Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph E3.1.15, the Applicant is responsible "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or 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 Executive Order 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 relating to the guideline for Financial Considerations is set out in Paragraph 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 Subparagraph 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly under Subparagraph 19(c), *“a history of not meeting financial obligations”* may raise security concerns. Applicant has had difficulty meeting her financial obligations. I find no countervailing Mitigating Conditions that are applicable here. Under Subparagraph 20 (d), it may be mitigating where *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Although Applicant has paid the past-dues debt to Creditor F, she has yet to address the other admitted past-due debts. Guideline F is found against Applicant.

Guideline J - Criminal Conduct

Paragraph 30 of the adjudicative guidelines sets out the security concern relating to Criminal Conduct:

Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

The adjudicative guidelines set out certain conditions that could raise security concerns. Paragraph 31(a) provides that *“a single serious crime or multiple lesser offenses,”* may raise security concerns. Applicant deliberately wrote bad checks in 2007, and used illegal substances from 2003~2011. However, this is countered by the mitigating condition in Subparagraph 32(a) as *“so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.”* Applicant’s Criminal Conduct was more than four years ago.

Guideline E - Personal Conduct

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

The guideline notes several conditions that could raise security concerns. Under Subparagraph 16(a), "*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire,*" may be disqualifying. Applicant was not candid about her past-due indebtedness and her past criminal conduct. I find no countervailing Mitigating Conditions that are applicable here. Guideline E is found against Applicant.

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. Under AG Subparagraph 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Subparagraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For this reason, I conclude Applicant has not mitigated the security concerns arising from her admitted Financial Considerations, and her alleged Personal Conduct.

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.e.	Against Applicant
Subparagraphs 1.f.~1.j.	For Applicant
Subparagraph 1.k.	Against Applicant
Subparagraph 1.l.	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a.~2.c:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a. and 3.b.:	Against Applicant
Subparagraph 3.c.	For 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge