



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06565

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel

For Applicant: *Pro se*

August 4, 2016

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on May 2, 2014. (Item 5.) On April 23, 2015, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) concerning 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 on September 1, 2006.

Applicant answered the SOR in writing on April 28, 2015, and requested a decision by an administrative judge without a hearing. (Item 2.) Department Counsel submitted the Government's written case (FORM) to Applicant on August 21, 2015.¹

¹Department Counsel submitted seven items in the FORM. Item 7 is inadmissible and will not be considered or cited as evidence in this case. It is the summary of unsworn interviews of Applicant conducted by an interviewer from the Office of Personnel Management on July 9, 2014. The summary was never adopted by Applicant as her own statement, or otherwise certified by her to be accurate. Under Directive ¶ E3.1.20, this

Applicant acknowledged receipt of the FORM on September 1, 2015. She was given 30 days from receipt of the FORM to submit any additional documentation. Applicant did not submit any additional information within that time. The case was assigned to me on January 5, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 51, and single. She is employed by a defense contractor and seeks to obtain a security clearance in connection with her employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations in the SOR under this paragraph. Those admissions are findings of fact.

The SOR lists eleven delinquent debts (SOR 1.a through 1.k). The total of the debts alleged in the SOR is approximately \$17,038. The existence and amount of all the debts is supported by a credit report dated June 7, 2014. (Item 6.) The smallest debt is for \$39 (1.a). The largest is for \$3,663 (1.k). The oldest debt dates from 2008, and the available evidence shows no payments on any of the debts in the SOR for many years.

Applicant has been gainfully employed by her current employer since June 2013. She was unemployed for ten months in 2012 and 2013, after being continuously employed since 2004. (Item 5, Section 13A.) However, Applicant did not submit any information showing that her lack of employment had an impact on her ability to pay her bills in a timely fashion. She did not submit a budget, or any other information concerning her income and expenses. Applicant submitted no evidence that she has received any financial counseling, made any payments, or received recent legal advice to stop paying her debts.

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has made false statements to the Department of Defense during the clearance screening process. Applicant admitted the single allegation under this paragraph.

Applicant filled out an e-QIP on May 2, 2014. (Item 5.) Section 26 of the e-QIP concerns Applicant's financial record. One of the subsections under that section is

Report of Investigation summary is inadmissible in the absence of an authenticating witness. Given Applicant's admissions, it is also cumulative.

entitled, "Delinquency Involving Routine Accounts." Applicant was asked whether, in the past seven years, she had bills or debts turned over to a collection agency. Applicant responded, "No," to this question. This was a false response. Applicant had a considerable number of delinquent debts that were in collection, as set forth under Paragraph 1, above, which fit the question. Applicant elected not to explain why her answer to this question was incorrect. Therefore, given her admission, I find that she willfully falsified her response to Section 26.

Applicant provided no evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 as appropriate 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 ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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, and 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (Guideline F, Financial Considerations)

The security concern relating to the guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be negligent, unconcerned, or irresponsible in handling and safeguarding classified information.²

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant has over \$17,000 in past-due debts, which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying conditions may be mitigated where “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.” This condition does not apply as Applicant’s financial difficulties have been in existence for several years and continue undiminished to date.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” Applicant was unemployed for ten months in 2012 and 2013, but she did not submit any evidence to show how she tried to responsibly resolve her debts over the following years.

AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” There is no evidence in the record to show that she has done so with regard to any of her creditors, even the smallest debt, which is only \$39.

In conclusion, looking at Applicant’s entire financial situation at the present time, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as is required by AG ¶ 20(c). Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or 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.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(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 knowingly and purposely falsified her e-QIP on May 2, 2014. I have reviewed the potential mitigating conditions set forth in AG ¶ 17, and find none of them

apply to the facts of this case. In particular, I have examined the span of time, less than three years, since the falsification. There is insufficient evidence that Applicant currently shows good judgment or is trustworthy and reliable. Paragraph 2 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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guidelines F and E, above, applies here as well. Applicant has had financial problems for several years, which she has not yet resolved. In addition, Applicant falsified her e-QIP about her debt situation. Applicant's conduct with regard to both allegations was not mitigated.

Under AG ¶ 2(a)(3), her conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

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 the security concerns arising from her financial situation and personal conduct. Accordingly, the evidence supports denying her request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.k:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge