



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01442

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

08/23/2016

Decision

Harvey, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges 13 delinquent debts, totaling \$55,026. In March 2016, her nonpriority unsecured debts, including all SOR debts, were discharged under Chapter 7 of the Bankruptcy Code. She intentionally failed to disclose her delinquent debts on her July 27, 2012 Electronic Questionnaire for National Security Positions (e-QIP) or security clearance application (SCA). She falsely denied having any work-related reprimands and suspensions in the past seven years on her SCA. Financial considerations security concerns are mitigated; however, personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On July 27, 2012, Applicant signed and submitted her SCA. (GE 1) On November 14, 2015, the Department of Defense (DOD) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guidelines F (financial considerations) and E (personal conduct). The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and it recommended that her case be submitted to an administrative judge for a determination whether her clearance should be granted, continued, denied, or revoked.

On December 29, 2015, Applicant responded to the SOR. On April 6, 2016, Department Counsel was ready to proceed. On May 24, 2016, the case was assigned to me. On June 6, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 20, 2016. (Hearing Exhibit (HE) 1) Applicant waived her right to 15 days of notice of the date, time, and location of her hearing. (Tr. 15-16) Her hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant offered six exhibits; and all exhibits were admitted without objection. (Tr. 19-24; Government Exhibit (GE) 1-4; Applicant Exhibit (AE) A-F) On June 27, 2016, DOHA received a copy of the transcript of the hearing. The record was held open for additional evidence until July 22, 2016. (Tr. 74, 85, 87-88) On July 22, 2016, Applicant's provided one post-hearing document, and it was admitted without objection. (AE G)

Findings of Fact¹

In her Answer to the SOR, Applicant made some admissions about facts underlying the allegations. (HE 3) Her admissions are accepted as findings of fact.

Applicant is 51 years old, and she has been employed by a government contractor for 16 years. (Tr. 26; GE 1) She provides physical security for a government department. (Tr. 8-9, 26; GE 1) In 1989, she received her general educational diploma (GED) and joined the Army. (Tr. 6-7) She has earned 39 college credits. (Tr. 6) She completed four years of Army active service and four years of Army reserve service. (Tr. 7) Her military occupational specialty (MOS) was supply specialist (97Y). (Tr. 8) She left active duty as a specialist (E-4), and she received an honorable discharge. (Tr. 8) She has never married, and she does not have any children. (Tr. 85) Applicant seeks continuation of her security clearance to maintain her employment. (Tr. 27-28)

Financial Considerations

Applicant's SOR alleges 13 delinquent debts, totaling \$55,026. The SOR alleges the following debts: four bank or bank credit card debts for \$15,628 (SOR ¶ 1.a), \$3,611 (SOR ¶ 1.c), \$960 (SOR ¶ 1.f), and \$10,556 (SOR ¶ 1.j); four store debts for \$4,252 (SOR ¶ 1.b), \$5,170 (SOR ¶ 1.k), \$1,255 (SOR ¶ 1.l), and \$937 (SOR ¶ 1.m); two debts of unspecified origin were placed for collection for \$1,509 (SOR ¶ 1.d), and \$1,357

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

(SOR ¶ 1.e); and three judgments were entered in 2013 of unspecified origin for \$1,957 (SOR ¶ 1.g), \$6,080 (SOR ¶ 1.h), and \$1,754 (SOR ¶ 1.i).

In 2012, Applicant said she paid the first debt consolidation company \$200 monthly; however, it went out of business. (Tr. 38-39, 73) I held the record open for her to provide proof of the payments to the first debt consolidation company; however, she did not provide proof of any payments. (Tr. 74, 77-78) From November 2012 to September 2013, Applicant made \$305 monthly payments to the second debt consolidation program. (AE G) The second debt consolidation company made some payments to her creditors. (AE G) She decided to utilize a different debt consolidation program, and she said she paid the third debt consolidation company \$200 monthly for "at least a year and maybe more." (Tr. 33-36; AE B) She was advised that it would take a long time to resolve her debts, and her advisor recommended that she utilize bankruptcy. (Tr. 38)

Applicant admitted she owed debts to the creditors in the SOR. (SOR response) In December 2015, Applicant filed for bankruptcy under Chapter 7 of the Bankruptcy Code. (Tr. 28; AE A; SOR response) She listed all of the SOR debts in her bankruptcy filing. (Tr. 29, 53-54) Her nonpriority unsecured debts were discharged in March 2016. (Tr. 29) She received financial counseling as part of the bankruptcy process. (SOR response)

Applicant's monthly pay after deductions is \$3,000 to \$3,500. (Tr. 42-43) Her monthly apartment rent is \$1,492. (Tr. 43) In April 2016, she purchased a Toyota sport utility vehicle, and her monthly payment is \$488. (Tr. 45-46) Her monthly payment for vehicle insurance is \$129. (Tr. 46) She has substantial additional expenses. (Tr. 46-52) She did not indicate her total monthly expenses or her monthly remainder after paying all of her expenses. She does not own any credit cards. (Tr. 56) She filed her federal income tax return for 2015. (Tr. 56) She is making \$50 monthly payments to her state tax authority for a \$300 income tax debt from 2015. (Tr. 57-59) She does not owe any other income taxes. (Tr. 59-60)

Personal Conduct

Section 26 of Applicant's July 27, 2012 SCA asked Applicant the following four questions about her delinquent debts: "**In the past seven (7) years**, [have] you had a judgment entered against you?"; "Are you currently delinquent on any debt?"; "**In the past seven (7) years**, [have] you defaulted on any type of loan"; and "**In the past seven (7) years**, [have you been] over 120 days delinquent on any debt not previously entered?" Applicant answered "No" to all of these questions. She did not disclose any delinquent debts on her SCA.

Applicant's July 31, 2012 combined credit report shows nine delinquent accounts as follows: (1) the charged-off debt in SOR ¶ 1.j for \$10,556 with delinquencies in the first three months of 2012; (2) the charged-off debt in SOR ¶ 1.a for \$15,628 and 120 days past due; (3) the charged-off debt in SOR ¶ 1.c for \$3,636 and 180 days past due; (4) the collection debt in SOR ¶ 1.b for \$4,252 and 150 days past due; (5) the collection

debt in SOR ¶ 1.h for \$6,285 was transferred from a bank and was delinquent for an unspecified period of time; (6) the collection debt in SOR ¶ 1.i for \$1,734 was transferred from a bank and was delinquent for an unspecified period of time; (7) the collection debt in SOR ¶ 1.e for \$1,391 was transferred from a bank and was delinquent for an unspecified period of time; (8) the collection debt in SOR ¶ 1.d for \$1,509 was transferred from a bank and was delinquent for an unspecified period of time; and (9) the charged-off debt in SOR ¶ 1.k for \$2,095 was transferred from a bank and was delinquent for an unspecified period of time. (GE 3)

There is no evidence of judgments entered against Applicant when she completed her July 27, 2012 SCA. The three judgements alleged in the SOR were entered in 2013. (GE 4)

An October 10, 2012, an Office of Personnel Management (OPM) personal subject interview (PSI) states:

When filling out her SF-86 case papers, the subject originally answered no to all financial questions. When asked to confirm her response, she confirmed all original responses of no. She added that on an unrecalled date in approximately 2010 or 2011 she consolidated all of her loans. Her overall financial situation is good. She contacted [first debt consolidation company] to consolidate all of her loans, which were at the moment on time. She awarded [first debt consolidation company] an initial payment of \$970 or \$980 and [first debt consolidation company] would consolidate all of her loans.

(GE 2) After additional commentary to the OPM investigator about how she was making payments to the first debt consolidation company, the OPM investigator confronted Applicant with most of the delinquent debts listed in her SOR. (GE 2) She said she did not list several of the delinquent accounts on her SCA because they were in good standing when she sought assistance from the first debt consolidation company, and she believed the accounts were being managed by the first debt consolidation company. (GE 2) She did not recognize several of the collection companies that were seeking resolution of delinquent debts. (GE 2)

At her hearing, Applicant explained that she intentionally caused her accounts to become delinquent because that enabled the accounts to become part of her debt consolidation program. (Tr. 61, 70) She said, "I thought they were talking about delinquency stuff that, you know, I just didn't pay. No. The accounts were good." (Tr. 61) She wanted to tell the OPM interviewer "the reason why they were delinquent. I made them delinquent." (Tr. 62)

Section 13A of Applicant's July 12, 2012 SCA asked Applicant about disciplinary actions during her current employment, "**in the last seven (7) years** have received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?" (GE 1) Applicant answered, "No" to this question. (Tr. 64; GE 1)

Applicant's SOR alleges that from December 2007 through December 2011, Applicant had 20 negative documents in her personnel file. She received 10 letters of reprimand, mostly for not being at work for a non-medical reason or being late to work and seven suspensions from work. She was suspended from work on the following dates: on March 14, 2009 for two days; on December 8, 2009, for one day; on April 24, 2010, for two days; on May 11, 2010, for two days; on October 4, 2010, for one day; on November 4, 2010, for two days; and on December 12, 2011, for five days.

Applicant admitted that she received reprimands for not being at work. (Tr. 64) She said she thought the question was asking about reprimands for security mistakes or errors. (Tr. 64, 67, 71-72, 78, 82-83) Also, she contended the reprimands were actually acknowledgements. (Tr. 67) She said she was unsure about her suspensions because she did not look in her personnel file. (Tr. 66) She said there were three types of administrative discipline: acknowledgements; reprimands; and memorandum for record. (Tr. 69) She admitted she had a reprimand and a suspension, and employees are told when they are suspended. (Tr. 69, 76)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing, "no 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 tasked Agency heads with the responsibility to maintain "an effective program to ensure that access to classified information by each employee is clearly consistent with the interests of the national security." Exec. Or. 12968, *Access to Classified Information*, Section 1.2(b).

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk an 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. Clearance decisions must be in terms of national security and access to classified information is limited to applicants "whose personal and professional history

affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information.” Exec. Or. 12968, Section 3.1(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in her credit reports, OPM PSI, SOR response, hearing transcript, and bankruptcy records. Several of Applicant’s debts became delinquent in 2012. The record establishes 13 delinquent debts, totaling \$55,026. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's eligibility for a security clearance, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's conduct in resolving her debts warrants full application of AG ¶ 20(c). She received financial counseling as part of the bankruptcy process. All of her nonpriority unsecured debts, including all SOR debts, were discharged in March 2016 under Chapter 7 of the Bankruptcy Code. There are clear indications that the problem is being resolved or is under control. She understands what she must do to establish and maintain her financial responsibility. Her delinquent SOR debts do not cast doubt on her current reliability, trustworthiness, or good judgment. Her efforts are sufficient to fully mitigate financial considerations security concerns.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 one condition that could raise a security concern and may be disqualifying with respect to the alleged falsification of her On July 27, 2012 SCA used to process the adjudication of Applicant's security clearance in this case:

(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.²

Section 26 of Applicant's July 27, 2012 SCA asked Applicant the following three relevant questions about her delinquent debts: Are you currently delinquent on any debt?"; **"In the past seven (7) years, [have] you defaulted on any type of loan";** and **"In the past seven (7) years, [have you been] over 120 days delinquent on any debt not previously entered?"**³ Applicant answered "No" to all of these questions.

Applicant was well aware that she had debts meeting the criteria of being over 120 days delinquent in the previous seven years and currently delinquent. She said she deliberately caused them to become delinquent. Moreover, when she started the first

²The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

³The allegation in SOR ¶ 2.b that she failed to disclose a judgment in the previous seven years is unsubstantiated because the three judgments alleged in the SOR were entered against her after she signed her SCA.

debt consolidation program, she knew that this program would not immediately bring all of her debts to current status. Her explanation at her hearing for not disclosing her delinquent debts on her July 27, 2012 SCA is not credible.

Section 13A of Applicant's July 27, 2012 SCA sought information from Applicant about whether she received adverse employment documentation, asking "**in the last seven (7) years** have received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?" (GE 1) Applicant answered, "No" to this question. (Tr. 64; GE 1)

From December 2007 through December 2011, Applicant received 10 letters of reprimand, mostly for not being at work for a non-medical reason or being late to work and seven suspensions from work. Her claim that she believed the question was limited to security-related reprimands and suspensions is not credible. While she may not have known how many reprimands and suspensions she received, she knew that she received at least one of each, during the previous seven years. She intentionally provided false information when she denied that she received work-related reprimands and suspensions on her July 27, 2012 SCA.

Applicant understood that the DOD was seeking specific derogatory or negative financial information about her history of delinquent debt and information about work-related problems. She knowingly and intentionally chose to deny that she had delinquent debts and adverse employment information. AG ¶ 16(a) is established.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

- (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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant deliberately and improperly provided false information in her July 27, 2012 SCA. Her falsification of her SCA by denying negative financial information and work-related reprimands and suspensions was improper and raised a serious security concern. No mitigating conditions apply. Guideline E concerns are not mitigated.

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.

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. AG ¶ 2(c). 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 some warrant additional comment.

Applicant is 51 years old, and she has been employed by a government contractor for 16 years. She provides physical security for a government department. She has earned 39 college credits. She completed four years of Army active service and four years of Army reserve service. She left active duty as a specialist, and she received an honorable discharge. She does not have any reportable criminal offenses, illegal drug use, or alcohol abuse. She is sufficiently mature to understand and comply with her security responsibilities.

In March 2016, Applicant's nonpriority unsecured debts, including all SOR debts, were discharged under Chapter 7 of the Bankruptcy Code. She completed financial counseling. Her bankruptcy has provided Applicant a fresh financial start. Applicant is an intelligent, mature person, and she understands what she needs to do to establish and maintain her financial responsibility.

Applicant intentionally provided false information about her delinquent debts in the previous seven years and her work-related reprimands and suspensions in the past seven years on her July 27, 2012 SCA. Her explanation for denying that she had delinquent debts in Section 26 of her SCA and her claim that she believed the question in Section 13A of her SCA was limited to information about security-related reprimands and suspensions are not credible. The protection of national security requires that those entrusted with access to classified information self-report derogatory information. Should a security violation occur, security clearance holders with knowledge of the facts must be sufficiently reliable and responsible to disclose the security violation, even if it reflects poorly on the security clearance holder. Applicant's failure to disclose facts on her July 27, 2012 SCA raises unresolved questions about her reliability, trustworthiness and ability to protect classified information.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont*, 913 F. 2d at 1401. Unmitigated personal conduct concerns lead me to conclude that grant or continuation of a security clearance to Applicant is not warranted at this time.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations security concerns are mitigated; however, personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

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:	FOR APPLICANT
Subparagraphs 1.a to 1.m:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant

Conclusion

In light of all 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 a security clearance is denied.

Mark Harvey
Administrative Judge