



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01724

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: *Pro se*

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns, but she did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 25, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on November 13, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on January 11, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections

and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 21, 2016. She responded with a letter and attached documents that I have marked Applicant's Exhibits (AE) 1 and 1(A) through 1(J). The case was assigned to me on March 22, 2016. The Government exhibits included in the FORM and AE 1 and 1(A) through 1(J) are admitted in evidence without objection.

Findings of Fact

Applicant is a 59-year-old employee of a defense contractor. She has worked for her current employer since May 2012. She is a high school graduate. She is married with two adult children.¹

Applicant worked in a public school from 2009 through at least 2012. She was reprimanded for incidents that occurred in about April 2012 for "exercising poor judgment and using inappropriate physical force when [she] interacted with multiple students in [her] care." The school's investigation concluded that Applicant (1) pushed a non-verbal female student and cursed at her; (2) plucked a female student in the face when the student spat at Applicant; and (3) boxed a male student on his ears. A letter of reprimand was prepared in April 2012, but Applicant denied receiving a copy. She stated the principal retired and never issued her the letter. Applicant did not work at the high school over the summer.²

Applicant received a letter of reprimand from the new principal of the high school in September 2012. She was reprimanded for an incident that occurred in May 2012 in which she was observed "yelling at a female special education student on the track." According to a witness, "the student turned her back on [Applicant]. [Applicant] then allegedly grabbed her, spun her around and continued chastising her for walking and not running on the track." Additionally, in June 2012, Applicant "left the school without following proper leave procedures." Applicant and her supervisor met in June 2012 and on August 28, 2012, to discuss the May 2012 incident. The September 2012 letter of reprimand referenced the April 2012 reprimand letter and stated it "was given to [Applicant] in a meeting from the principal."³

¹ Items 1-3; AE 1.

² Items 1-3; AE 1, 1(G), 1(H).

³ Item 1; AE 1, 1(F), 1(H). The SOR alleged that Applicant was reprimanded in April 2011 "for being too rough with a student." It did not allege any reprimands in 2012. There is no evidence that Applicant was reprimanded in 2011. The SOR allegation was based on statements made by Applicant during her background interview that describe a reprimand in April 2011. Apparently, either Applicant or the interviewer got the year wrong. I consider SOR ¶ 2.a to refer to the first incident in the April 2012 letter that Applicant "pushed a non-verbal female student and cursed at her." The remaining two incidents in the April 2012 letter and the incidents described in the September 2012 reprimand were unalleged conduct. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered in gauging Applicant's credibility, when assessing mitigation, and in the whole-person analysis.

Applicant essentially denied committing the conduct alleged in the letters of reprimand, as the matters involved incidental contact or they never occurred. She provided a letter from the mother of the girl that Applicant allegedly pushed. The mother does not believe Applicant was abusive to her daughter, as her daughter never mentioned it to her. Applicant stated that she received training from the school that taught her “how to deal with and overcome offensive disruptive student behavior.” A November 2015 memorandum from the high school indicates that “[t]here have been no additional employee performance issues since [the September 2012] reprimand.” Applicant submitted a letter from her facility security officer (FSO) attesting to her excellent job performance, loyalty, and trustworthiness.⁴

Applicant had financial problems, which she attributed to her husband’s employment issues beginning in about 2009, and her two children entering college in 2008 and 2009. She wrote that “[w]ith the brunt of the financial responsibility and the care of a husband and two children [she] had to place most of the credit cards and outstanding bills in [her] name, thus making it difficult to keep them paid up to date and [they] lived paycheck to paycheck.”⁵

The SOR alleges two unpaid judgments and eight delinquent debts. However, the evidence suggests that the judgments alleged in SOR ¶¶ 1.f (\$623) and 1.g (\$623) and the debts alleged in SOR ¶¶ 1.e (\$2,353) and 1.h (\$2,055) are duplicates. SOR ¶ 1.c alleges a \$9,424 debt. Credit reports indicate that the creditor charged off \$9,424, but the highest balance reported is \$8,341. In her response to the SOR, Applicant admitted owing the debts alleged in SOR ¶¶ 1.a (\$305), 1.c (\$9,424), 1.d (\$1,405), 1.e (\$2,353), 1.i (\$327), and 1.j (\$1,629). She indicated that she would borrow from her mother to pay the debts.⁶

Applicant borrowed from her mother in December 2015 and paid or settled the following debts: SOR ¶¶ 1.a (\$305), 1.d (\$1,405), 1.e (\$2,353 – settled for \$1,411), and 1.i (\$327). Applicant stated that the \$9,424 debt alleged in SOR ¶ 1.c is “in recovery,” and that she was “awaiting official documentation” from the creditor, who informed Applicant that the process could take between 8 and 16 weeks. The August 2015 credit report shows the balance of the SOR ¶ 1.c debt as \$1,816 with the last payment in July 2015. The February 2016 credit report shows the balance of the debt as \$1,216 with the last payment in September 2015. Applicant stated that she would borrow from her mother again and pay the remaining debts that she could identify as belonging to her.⁷

Applicant submitted a Questionnaire for National Security Positions (SF 86) in July 2012. She answered “No” to the following question regarding her employment at the high school:

⁴ Items 1, 3-6; AE 1(H)-1(J).

⁵ Items 1, 3 ; AE 1.

⁶ Items 1, 3-6; AE 1(A).

⁷ Items 1, 5, 6; AE 1, 1(A)-1(E).

For this employment, **in the last seven (7) years** have you received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?

Applicant also answered “No” to all the financial questions under Section 26, including the following:

In the past seven (7) years, you had a judgment entered against you. (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).

In the past seven (7) years, you defaulted on any type of loan? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).

In the past seven (7) years, you had bills or debts turned over to a collection agency? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).

In the past seven (7) years, you have been over 120 days delinquent on any debt not previously entered? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).

You are currently over 120 days delinquent on any debt? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).⁸

Applicant was interviewed for her background investigation on August 22, 2012. She discussed a reprimand, but she stated it occurred in April 2011. Applicant stated that a student began to fall when she was walking down the hall and Applicant grabbed the student by the arm to steady her. Applicant stated that someone reported that she grabbed a student and pushed her against the wall and that Applicant told the student that she was on her “[expletive] list.” Applicant told the investigator that she received a letter of reprimand from her supervisor. She stated that there were no other problems or issues with her employment at the high school.⁹

Applicant also discussed her finances during her background investigation. She stated that the debt alleged in SOR ¶ 1.c was for a car loan for her son that he stopped paying. Applicant stated that she had been paying \$200 a month to the creditor since 2010 or 2011, and the balance was down to a little over \$7,000. She stated her debts

⁸ Item 2.

⁹ Item 3.

occurred because of her children and the need to pay the mortgage rather than the debts.¹⁰

Applicant denied intentionally falsifying the SF 86. She stated that she did not receive the April 2012 letter of reprimand until after she submitted the SF 86. The second letter was dated after the SF 86. The report of investigation that summarized Applicant's background interview indicated that Applicant admitted that she received a letter of reprimand from her supervisor. She also stated that there were no other problems or issues with her employment at the high school. However, the April 2012 letter was from the principal, not the supervisor, and the high school confirmed that only the principal can issue a letter of reprimand.¹¹ There is insufficient evidence for a determination that Applicant received the April 2012 letter of reprimand before she submitted the SF 86 and that she intentionally falsified the question regarding her employment at the high school.

Applicant stated that it was never her intention to "hide or not tell the truth" about her debts. She stated that she "just did not realize at the time that [her] debt was in that dire of condition." The FSO did not go over the SF 86 with her or "explain the sensitivity of the whole process." Applicant wrote that she "would like to deeply apologize for not fully understanding the overall impact of having these delinquent accounts and not filling out the SF 86 in detail." She assured that it would not happen again.¹²

The judgment was awarded in September 2005, close to seven years before the SF 86, and Applicant stated she was unaware of it. I do not find that she intentionally falsified the question about judgments. However, other debts became delinquent within the seven-year period.¹³ I am convinced by substantial evidence¹⁴ that Applicant was aware that she had delinquent debts before the SF 86 was issued and that she intentionally falsified the SF 86 when she failed to report the debts.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

¹⁰ Item 3.

¹¹ Items 1, 3; AE 1.

¹² Item 1; AE 1.

¹³ Items 4-6.

¹⁴ Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." ISCR Case No. 10-09035 at 5 (App. Bd. Jun. 13, 2014) (citing Directive ¶¶ E3.1.14; E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994); ISCR Case No. 04-07187 at 5 (App. Bd. Nov. 17, 2006).

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."

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 of 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. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had delinquent debts that she was unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 paid or settled four of the eight non-duplicate debts alleged in the SOR. There is some question about the largest debt alleged in the SOR in that recent credit reports show payments and the balance reduced to \$1,216. Her finances are less than perfect, but she has a plan to resolve her financial problems, and she has taken significant action to implement that plan. Financial considerations security concerns are mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 conditions are 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;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(2) disruptive, violent, or other inappropriate behavior in the workplace; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

There is insufficient evidence to conclude that Applicant intentionally falsified the question on her SF 86 regarding her employment at the high school. AG ¶ 16(a) is not applicable to SOR ¶ 2.b, and that allegation is concluded for Applicant. Applicant did intentionally falsify the SF 86 when she failed to report her delinquent debts. AG ¶ 16(a) is applicable to SOR ¶ 2.c.

Applicant's workplace issues reflect questionable judgment and an unwillingness to comply with rules and regulations. They also created a vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(d) and 16(e) are applicable.

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;
- (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.

Applicant received remedial training from the high school, and the school indicated in November 2015 that “[t]here have been no additional employee performance issues since [the September 2012] reprimand.” Applicant’s workplace issues at the high school are mitigated.

Having determined that Applicant intentionally provided false information on the SF 86, I have also determined that her statement that the omission was unintentional was also false. It would be inconsistent to find that conduct mitigated.¹⁵

¹⁵ See ISCR Case 03-22819 at 4 (App. Bd. Mar. 20, 2006), in which the Appeal Board reversed the Administrative Judge’s decision to grant Applicant’s security clearance:

Once the Administrative Judge found that Applicant deliberately falsified a security clearance application in September 2002, the Judge could not render a favorable security clearance decision without articulating a rational basis for why it would be clearly consistent with the national interest to grant or continue a security clearance for Applicant despite the falsification. Here, the Judge gives reasons as to why he considers the falsification mitigated under a “whole person” analysis, namely that Applicant has matured, has held a position of responsibility, recognizes how important it is to be candid in relation to matters relating to her security clearance, and has changed her behavior so that there is little likelihood of recurrence. However, the Judge’s conclusion runs contrary to the Judge’s rejection of Applicant’s explanations for the security clearance application falsification. At the hearing (after earlier admitting the falsification in her March 2003 written statement to a security investigator), Applicant testified that she had not intentionally falsified her application. Given the Judge’s rejection of this explanation as not being credible, it follows that the Judge could not have concluded Applicant now recognizes the importance of candor and has changed her behavior.

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 relevant 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 E and F in this whole-person analysis.

I considered Applicant's favorable character evidence and the steps she has taken to correct her financial problems. However, Applicant was untruthful about her finances on her SF 86. Self-reporting is a fundamental requirement for clearance holders.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns, but she did not mitigate the 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:	For Applicant
Subparagraphs 1.a-1.j:	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraphs 2.a-2.b:	For Applicant
Subparagraph 2.c:	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.

Edward W. Loughran
Administrative Judge