



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



In the matter of:

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ISCR Case No. 15-05287

Applicant for Security Clearance

Appearances

For Government: Douglas Velvel, Esq., Department Counsel

For Applicant: *Pro se*

10/12/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to show sufficient progress resolving some of the delinquent debts listed on her statement of reasons (SOR). Applicant admitted that she deliberately failed to disclose financial information, criminal conduct, and employment information on her Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Financial considerations and personal conduct security concerns are not mitigated. Access to classified information is denied.

Statement of the Case

On July 11, 2014, Applicant completed and signed her SCA. Item 2. On March 24, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs). The SOR set forth security concerns arising under the financial considerations and personal conduct guidelines.

On April 13, 2016, Applicant responded to the SOR and waived her right to a hearing before an administrative judge. Item 1. On August 23, 2016, Department Counsel completed the File of Relevant Material (FORM). On October 11, 2016, Applicant

received the FORM, and Applicant did not respond to the FORM. On October 1, 2017, the case was assigned to me. The case file consists of four exhibits. Items 1-4. Applicant did not object to any of the Government exhibits, and they were admitted into evidence.

On December 10, 2016, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective “for all covered individuals” on or after June 8, 2017. Accordingly, I have evaluated Applicant’s security clearance eligibility under the new AGs.¹

Findings of Fact²

In Applicant’s SOR response, she admitted the allegations in SOR ¶¶ 1.a, 1.f through 1.i, 1.k, 1.l, 1.m, 1.r, and 2.a through 2.d. She also provided extenuating and mitigating information. Applicant’s admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is 46 years old, and she has been employed as a controller since August 2011.³ In 1989, she graduated from high school. From January 2003 to August 2010, she was employed as an assistant manager at two banks. She was unemployed from August 2010 to August 2011. She did not serve in the military. In 1993, she married, and in 2010, she divorced. She does not have any children.

Financial Considerations

Applicant’s SOR alleges 17 delinquent debts, and their status is as follows: ¶ 1.a is a judgment for \$2,955 (Applicant admitted the debt and said the balance is \$1,536.); ¶ 1.b is a judgment for \$4,067 (Applicant denied the debt and said the account was settled and closed.); ¶¶ 1.c, 1.d, and 1.e are three delinquent debts owed to banks for \$7,976, \$633, and \$3,320 (Applicant denied the three debts, and she said the three debts are settled and closed.); ¶¶ 1.f, 1.g, 1.h, 1.i, 1.k, 1.l, 1.m, 1.o, 1.p, and 1.q are 10 delinquent medical debts for \$1,736, \$1,576, \$1,085, \$691, \$239, \$212, \$54, \$40, \$40, and \$13 (Applicant admitted the first seven medical debts; however, she did not describe any plan to resolve the debts. She denied the last three medical debts and said they were paid.); and ¶¶ 1.j and 1.n are telecommunications debts for \$449 and \$42 (Applicant denied these two debts, and said they were settled and closed.). Item 1. Applicant’s unsecured

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/SEAD4_20170608.pdf.

² Some details were excluded to protect Applicant’s right to privacy. Specific information is available in the cited exhibits.

³ The source for the information in this paragraph is Applicant’s July 11, 2014 Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Item 2.

and nonpriority debts were discharged in February 2005 under Chapter 7 of the Bankruptcy Code.

Applicant's February 1, 2016 credit report, the most recent credit report of record, does not include the following SOR debts that Applicant said were resolved: ¶¶ 1.c, 1.d, and 1.e. Applicant is credited with mitigating these three SOR debts.

In the FORM, Department Counsel noted the absence of corroborating or supporting documentation of resolution of the SOR debts. FORM at 2. Aside from Applicant's uncorroborated statements, there is no documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved any of the other SOR debts. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for her financial problems and other mitigating information. The FORM informed Applicant that she had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. FORM at 2. She did not respond to the FORM.

Personal Conduct

Applicant's July 11, 2014 SCA asked four questions about her employment during the previous seven years: (1) did she quit a job after being told she would be fired; (2) did she leave a job by mutual agreement following charges or allegations of misconduct; (3) did she leave a job by mutual agreement following notice of unsatisfactory performance; and (4) did she receive a written warning, official reprimand, suspension, or discipline for misconduct in the workplace, such as violation of a security policy. Applicant answered, no, and "deliberately failed to list that [she] had been fired from [her] position with the bank in August 2010 for violating a bank policy." Applicant admitted this allegation without explanation or elaboration. Item 1; SOR ¶ 2.a.

Applicant's July 11, 2014 SCA asked have you ever been charged with an offense involving alcohol or drugs? Applicant answered, no, and "deliberately failed to list that [she] had been arrested for Operating While Intoxicated in December 2005." Applicant admitted this allegation without explanation or elaboration. Item 1; SOR ¶ 2.b.

Applicant's July 11, 2014 SCA asked three financial question about debts in the previous seven years: (1) has she had a judgment entered against her; (2) has she had bills or debts turned over to a collection agency; and (3) has she had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. Applicant answered, no, to all three questions, and "deliberately failed to list" that she had two judgments entered against her within the last seven years, as set forth in SOR ¶¶ 1.a and 1.b, and the delinquent debts in SOR ¶¶ 1.c through 1.q. Applicant admitted this allegation without explanation or elaboration. Item 1; SOR ¶¶ 2.c and 2.d.

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 authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865.

Eligibility for a security clearance is predicated upon the applicant 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 commonsense 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”

ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure 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 or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts;” “(b) unwillingness to satisfy debts regardless of the ability to do so;” and “(c) a history of not meeting financial obligations.” The evidence of record establishes AG ¶¶ 19(a), 19(b), and 19(c).

Seven financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(a) the behavior happened so long ago,⁴ 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;

⁴ A debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;⁵

(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;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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

Once a concern arises regarding an Applicant's security clearance eligibility, 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

purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. February 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

⁵ The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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).

None of the mitigating conditions fully apply; however, Applicant presented some mitigating information. She was unemployed from August 2010 to August 2011. In 2010, she divorced. She did not show how or the extent divorce and unemployment adversely affected her finances. She said she paid several SOR debts. She did not describe the receipt of credit counseling in the last three years. She did not prove that she acted responsibly under the circumstances.

The absence of some SOR delinquent debts from her current credit report does not necessarily mitigate security concerns. “[T]hat some debts have dropped off his credit report is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer.⁶ Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company’s request for information, or when the debt has been charged off. Applicant indicated she paid three SOR debts, and they are not listed as delinquent on her most recent credit report. I have credited her with mitigating the debts in SOR ¶¶ 1.c, 1.d, and 1.e. I have also credited Applicant with mitigating SOR ¶ 1.r because her Chapter 7 bankruptcy was 12 years ago.

Applicant did not provide documentation relating to her other SOR debts such as: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that she paid or made any payments to the creditor; (2) correspondence to or from the creditor to establish maintenance of contact;⁷ (3) copies of credible debt disputes sent to the creditor and/or credit reporting companies indicating she did not believe she was responsible for the debt and why she held such a belief; (4) evidence of attempts to negotiate payment plans, such as settlement offers or

⁶ Title 15 U.S.C. § 1681c. See Federal Trade Commission website, Summary of Fair Credit Reporting Act Updates at Section 605, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>.

⁷ “Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

agreements to show that she was attempting to resolve this debt; or (5) other evidence of progress or resolution.

There is insufficient evidence about why Applicant was unable to make greater documented progress resolving her SOR debts. There is insufficient assurance that her financial problem is being resolved and will not recur in the future. Under all the circumstances, she failed to establish that financial considerations security concerns are mitigated.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case, "(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations, . . . determine security clearance eligibility or trustworthiness. . . ."⁸ In her SOR response, Applicant admitted that she "deliberately failed to list" on her July 11, 2014 SCA: (1) that she had been fired from her position with the bank in August 2010 for violating a bank policy; (2) that she was arrested for Operating While Intoxicated in December 2005; (3) that she had two judgments entered against her within the last seven years, as set forth in SOR ¶¶ 1.a and 1.b; and (4) the delinquent debts in SOR ¶¶ 1.c through 1.q. AG ¶ 16(a) is established.

⁸ The 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)).

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 advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. 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 contributed to 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 activities was unwitting, 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.

None of the mitigating conditions apply. Applicant admitted that her omissions on her SCA were deliberate. This falsification by intentionally failing to disclose information about her criminal record, employment record, and finances was serious, improper, and raised a security concern. Personal conduct security 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(d):

(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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines F and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is 46 years old. In 1989, she graduated from high school. From January 2003 to August 2010, she was employed as an assistant manager at two banks. She was unemployed from August 2010 to August 2011. From August 2011 to present, she has been employed as a controller at a private company. In 2010, she divorced.

Applicant did not make enough progress paying or resolving her SOR debts. She did not adequately explain why she had delinquent debt. She did not provide a credible plan for resolving her remaining delinquent debt.

Applicant's falsification of her SCA by intentionally failing to disclose information about her criminal record, employment record, and finances was deliberate and improper. Her falsification in a security context raises a serious security concern. The protection of national security relies on applicants to self-report conduct that jeopardizes security, even when that disclosure might damage the applicant's career. Applicant cannot be trusted to disclose potentially derogatory information. She did not establish her reliability, trustworthiness, and ability to protect classified information.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations and personal conduct security concerns are not mitigated.

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 and 1.b:	Against Applicant
Subparagraphs 1.c, 1.d, and 1.e:	For Applicant
Subparagraphs 1.f through 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraphs 2.a through 2.d:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge