



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



In the matter of:)
)
) ISCR Case No. 15-08364
)
Applicant for Security Clearance)

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/07/2017

Decision

CERVI, Gregg A., Administrative Judge:

Applicant mitigated the financial considerations security concerns. The personal conduct allegations were not supported by evidence of intentional falsification. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on December 15, 2014. On May 18, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations, and E, personal conduct.²

¹ Also known as a Security Clearance Application (SCA).

² The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the adjudicative

Applicant responded to the SOR on June 22, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on July 25, 2016.

A complete copy of the FORM was provided to Applicant, who had an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on August 1, 2016. She did not respond to the FORM. The case was assigned to me on May 19, 2017. On June 1, 2017, Applicant was provided an opportunity to submit any matters in mitigation. She submitted Applicant's Exhibit (AE) A. All exhibits are admitted into evidence without objection.

Findings of Fact

The SOR alleged Applicant had a delinquent consumer debt and a judgment by a debt collector totaling approximately \$16,850. Additionally, the SOR alleged Applicant falsified her SCA by failing to report the two SOR debts and one other debt that was charged off in 2014. Applicant denied the allegations, and provided explanations in her answer to the SOR. Her admissions and explanations are incorporated in my findings of fact.

Applicant is 54 years old and has been employed by a defense contractor since 2002. She graduated from high school in 1980. She has been married since 2010 and has one adult child. She was previously married in 1983 and divorced in 1984, married and divorced in 1991, and finally married in 1993 and divorced in 2005. Her last security clearance was granted in 2005. She reported no financial delinquencies in her SCA.

Applicant was confronted with the consumer and bank delinquent accounts during her interview with an Office of Personnel Management (OPM) investigator in March 2015. She reported that she was surprised to hear of the debts, and believed the consumer debt may have been her husband's credit card since she did not have a charge account at the store, and they kept their finances separate. She also was surprised about a bank credit card charged-off in 2014 since she has a charge card account with the bank that is not delinquent. She did not know of the delinquent accounts alleged, but resolved to research and pay them.

Applicant stated in her answer to the SOR that the two debts (consumer debt and judgment) alleged under Guideline F are the same debts. The original debt was approximately \$8,000. She stated that when she completed the SCA in December 2014, she was unaware of the delinquent debts, current or past, and there was no judgment filed against her at the time. However, Applicant accepted responsibility once informed of the debts, researched them and began negotiations with the bank, creditor and debt collector to resolve them. She contacted the bank that reported the charged-off account and paid the debt in-full in August 2015. Regarding her conversations with the collection

guidelines (AG), implemented by the DOD on September 1, 2006. The adjudicative guidelines are codified in 32 C.F.R. ¶ 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

agency and consumer creditor, she disputed an \$839 portion of the debt being charged by the collection agency. Despite her efforts, they opted to file a judgment action in August 2015. Applicant settled the judgment in-full in June 2016. When she later determined the judgment was not removed from her credit report, she hired counsel to assist her to resolve the matter. She stated that she did not knowingly or deliberately omit any information from her SCA as the debts were unknown to her and the judgment was filed after she completed her SCA.

She noted that she has maintained complete transparency with her supervisor and program director throughout her 14-year career and during the process to resolve her financial matters.

Law and Policies

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 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(a), 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.

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 clearance decision.³ The Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁴

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." It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, "the

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. DOD*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.” Under *Egan*, Exec. Or. 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.⁵

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 Exec. Or. 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* Exec. Or. 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

(b) a history of not meeting financial obligations.

Applicant had a delinquent debt. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(b) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following may be potentially applicable:

⁵ *Egan*, 484 U.S. at 531.

(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's debts were resolved in 2015 and 2016. She acted responsibly to resolve her debts once she became aware of them during her OPM interview. She addressed the debts within a month of discovering their existence, and negotiated settlements and paid them. When she determined the judgment was not removed from her credit report, she hired counsel to resolve the matter. Generally, Applicant has shown that her financial concerns are resolved and under control. Her delinquent debts no longer cast doubts on her reliability, trustworthiness, and good judgment. AG ¶¶ 20(a),(b),(c), (d), and (e) apply.

Guideline E, 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 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.

The relevant disqualifying condition in this case is:

AG ¶ 16(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.

When falsification allegations are controverted, as in this case, the Government has the burden of proving the allegations. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.⁶ An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.⁷

Applicant asserted that when she completed her SCA in 2014, she was not aware of any delinquent debts, collections, or judgments in her name. Once she learned of the debts during the OPM interview, she diligently pursued their resolution. The judgment on one of these debts was filed after she completed her SCA, and only when she disputed a portion of the debt while attempting to resolve it. There is insufficient evidence to show she deliberately and intentionally misled the government when she completed her SCA. She asserted that the delinquent accounts in question were not known to her, but her husband had one of the store credit cards, and she has an up-to-date charge card with the bank that reported a charged-off account in 2014. Although applicant's are expected to carefully read the questionnaire and answer truthfully, based on the evidence in the record, Applicant's omissions fail to rise to the level of intentional or deliberate falsifications.

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 all of the

⁶ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

⁷ ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

potentially disqualifying and mitigating conditions in light of all the evidence in favor of and against Applicant, and the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guidelines F and E in this whole-person analysis.

Overall, Applicant did not deliberately falsify her SCA by failing to disclose delinquent or past-due debts, or a judgment. In addition, her good-faith efforts to resolve delinquent debts as soon as she became aware of them, leaves me without questions or doubts as to her eligibility and suitability for a security clearance.

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 and 1.b: | For Applicant |
| Paragraph 2, Guideline E: | For Applicant |
| Subparagraph 2.a – 2.c: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Gregg A. Cervi
Administrative Judge