



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01976

Appearances

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

07/30/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is sufficient to establish that her financial problems are being resolved and are under control. Notwithstanding, she deliberately falsified her 2016 security clearance application when she failed to disclose her financial problems. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 5, 2016. She was interviewed by a government investigator on December 29, 2016. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a statement of reasons (SOR) on June 21, 2017, alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant answered the SOR on July 5, 2017, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on January 17, 2018, and issued a notice of hearing on March 16, 2018, setting the hearing for April 11, 2018. At the hearing, the Government offered five exhibits (GE 1 through 5). Applicant testified on her own behalf and submitted five exhibits (AE 1 through 5). AE 5 was received post-hearing. All

exhibits were admitted as evidence without objections. DOHA received the hearing transcript (Tr.) on April 19, 2018.

Findings of Fact

Applicant admitted SOR allegations 1.a, 1.b, and 1.k through 1.p. Concerning the falsification allegation in SOR 2.a, Applicant admitted that she did not list any of her delinquent or charged-off accounts, but denied she intended to falsify her SCA or to mislead the Government. I considered SOR 2.a denied. Her admissions to the SOR allegation, and those at her hearing, are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 52-year-old employee of a federal contractor. She graduated from high school and completed some college courses between 1984 and 1989, but she is 30 credit-hours short of her bachelor's degree in business administration. Applicant married in 2001 and divorced in 2007. She has three children, ages 27, 25, and 16, all of whom live with her and for whom she provides some financial support.

Applicant worked as an administrative assistant for a state agency between 2003 and 2007. She worked for a private company as an executive assistant between September 2007 and July 2014. She was laid off due to performance issues in July 2014, and was unemployed until September 2014, when she was hired by a private company. A federal contractor hired Applicant in October 2015 and she was granted an interim clearance after she submitted her February 2016 SCA. Her interim clearance was revoked as a result of the concerns raised in the June 2017 SOR, and she was terminated from her position in July 2017. She was unemployed until December 2017, when she was hired by her current employer.

Section 26 (Financial Record) of the 2016 SCA asked Applicant to disclose whether she had any financial problems, including having any accounts delinquent, placed for collection, or charged off. Applicant answered "No" to all the financial questions. She disclosed having no financial problems. She failed to disclose the accounts alleged in the SOR, which are established by the record evidence and her admissions.

Applicant was questioned about her undisclosed delinquent debts during her December 2016 interview. She discussed with the investigator the following delinquent debts:

1. A \$1,601 delinquent rent. (SOR 1.a) Applicant stated she left the apartment without making the required walk through and was assessed one-month rent. She claimed she was owed the rent deposit, and that she was attempting to negotiate a settlement with the collection agency for the renter. She claimed she did not disclose the debt on her February 2016 SCA because she was not aware of the charges until she saw her credit report in October 2016.

Attached to her SOR answer, Applicant submitted a settlement agreement, dated June 30, 2017. She agreed to pay \$800 (less than the \$1,600 owed). At hearing, Applicant explained that she was unable to make the settlement payment because she was terminated from her job when she lost her interim clearance in July 2017. She entered into a new agreement on April 11, 2018 (the day before the hearing), and authorized the creditor to withdraw \$267 from her account on April 13, 2018 and May 18, 2018. She presented no evidence showing that the payments were made. (AE 5, Tr. 34-35)

2. A \$1,149 collection from a phone services provider. (SOR 1.b) Applicant told the investigator that she contacted the collection agency prior to December 3, 2016, and agreed to pay \$50 monthly starting on January 22, 2017. She presented to the investigator a letter from the collection agency confirming the payment agreement. At her hearing, Applicant presented a receipt showing that she had paid \$250 on March 15, 2018, with total payments made of \$600. (AE 5)

3. A \$90 debt to a bank for a car loan from about August 2015. Applicant presented a letter to the investigator from the bank, dated December 28, 2016, indicating the debt was paid in full. (It is not clear when the debt was paid.) Applicant attached the letter to her SOR answer. This debt was alleged in the SOR under 1.c and 1.j, both of which I find for Applicant. She did not disclose the debt on her February 2016 SCA because it had been paid.

4. A \$399 collection for furniture rental. (SOR 1.d) Applicant disputed the collection because she had paid the debt. She presented documentary evidence showing that she paid the debt in March 2015.

5. Four delinquent student loans incurred between 2003 and 2005 (SOR 1.e through 1.h). Applicant presented a letter from the collection agency discussing the possibility of consolidating the student loans, dated November 21, 2016. During the interview, Applicant stated that when presented with the consolidation plan, she intended to make monthly payments to repay her student loans. She failed to disclose her student loans in her 2016 SCA because the loans were more than seven years old and she believed they did not need to be reported.

In her SOR answer, Applicant claimed she had “paid in full” her student loans, and presented a credit report showing the student loans were paid. At her hearing, she clarified that she consolidated her student loans into new loans and the new creditor had paid the old student loans. She is in the process of starting to pay her consolidated loans making \$50 monthly payments (income adjusted payments).

6. A \$114 debt to a phone services provider. Applicant told the investigator that the debt was resolved. She disputed it and it was removed from her credit report. A January 4, 2017 letter from the service provider confirmed her statements. She did not disclose the debt on her February 2016 SCA because she was not aware of the debt until she saw her credit report in October 2016.

7. Six traffic tickets alleged in SOR 1.k through 1.p, totaling about \$2,280. Applicant stated that her son incurred the tickets while driving her car, and that she was unaware of them. Applicant claimed she resolved the tickets in January 7, 2016, when she agreed to make payments of \$50 a month. Applicant further claimed she did not disclose the tickets in her February 2016 SCA because she was unaware of them until she checked her credit report in October 2016. (See GE 2, the above dates are consistent with those stated in the interview summary.)

Applicant claimed that after her hearing, she contacted the creditor and agreed to make \$50 payments monthly. She also claimed her son was to make \$50 monthly payments too. She presented no documentary evidence of any payment agreements or of any payments made. (AE 5)

8. A \$698 delinquent debt for her stay at a hospital in August 2015. She presented a letter from the creditor acknowledging receipt of the final payment (undated). She claimed she did not disclose the debt on her February 2016 SCA because she was not aware of the debt until she saw her credit report in October 2016. This debt was not alleged in the SOR.

Applicant told the investigator that she allowed the above debts to become delinquent because she was immature, did not understand how credit works, and ignored her creditors' demands for repayments. In October 2016, she wanted to purchase a home and requested a credit report that listed her delinquencies. She now understands the repercussions of having bad credit and she started to repair her credit. She believes that she has matured and is now financially stable.

Concerning the falsification allegation (SOR 2.a), Applicant denied omitting the information with the intent to falsify her SCA or to mislead the Government. She testified: "I don't know what in the world I was thinking because my intent was never to just omit information. That would be pretty ignorant on my part because I knew full well that the information would be easy to see and to find . . . I don't know what I was thinking at that time that I would just say that I absolutely [had] no debts knowing full well that I have – I had numerous debts I have no explanation as to why that information was not disclosed . . . I do honestly regret not filling that out properly. (Tr. 14-15, 26)

Applicant noted that she raised three children as a single mother with no financial help. She considered the education of her children paramount and sent her children to private schools where they could receive a good education. She admitted that sometimes she had to alternate payments to make ends meet. She attributed her financial problems, in part, to her two periods of unemployment.

Applicant considers her current financial situation to be good. She lives within her financial means, and is trying to repair her credit. Her three adult children live with her and provide some financial assistance. She believes she is a financially responsible person. She admitted that in the past she made mistakes handling her finances, but

claimed she has matured and learned from her mistakes. She promised to repair her credit and to be financially responsible. Applicant has not participated in financial counseling. (Tr. 33)

Applicant is considered to be detail oriented, thorough, and professional. She consistently receives positive feedback from her clients and coworkers. She is loyal, honest, punctual, and holds herself to high standards. She is conscientious about following rules and procedures. She is considered to be a productive employee and a key member of the staff.

Policies

The SOR was issued under Executive Order 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 Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

While the case was pending a decision, the Director of National Intelligence implemented Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017, which replaced the 2006 AG, and are applicable to all adjudicative decisions issued on or after June 8, 2017. I decided this case under the current AGs implemented by SEAD 4.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The

applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

Applicant’s history of financial problems is documented in the record. Between 2003 and 2017, she took four student loans that became delinquent. Additionally, she had four consumer debt accounts and six traffic tickets in collection. AG ¶ 19 provides 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 record established the above disqualifying conditions, 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;¹ 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 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 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).

¹ 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. Jun. 4, 2001)).

Some of the financial considerations mitigating conditions are raised by the facts in this case and mitigate the security concerns. AG ¶ 20(a) is not fully applicable because Applicant's financial problems are recent and ongoing. AG ¶ 20(b) is applicable. Her evidence is sufficient to establish that her financial problems resulted from or were aggravated by circumstances beyond her control – she was a single mother raising three children without any financial assistance, and her periods of unemployment and underemployment exacerbated her financial problems.

Applicant should have been more diligent addressing her delinquent debts sooner. However, her payment of other debts not alleged in the SOR, and her recent efforts to resolve her delinquent debts present sufficient evidence of financial responsibility under her circumstances. AG ¶ 20(c) is applicable because Applicant's repayment efforts show that her financial problem is being resolved and is under control. AG ¶ 20(e) is applicable because she disputed one account and was resolved in her favor. Considering the evidence as a whole, Applicant's evidence is sufficient to mitigate the financial considerations concerns.

Guideline E, Personal Conduct

AG ¶ 15 articulates the security concern for 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(a) describes a condition that could raise a security concern and may be disqualifying in this case: "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations, . . . determine security clearance eligibility or trustworthiness. . . ."²;

² 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.

Considering the evidence as a whole, I find Applicant deliberately omitted her delinquent financial obligations from her 2016 SCA, including at least three consumer accounts (SOR 1.a through 1.c); her four student loans (SOR 1.e through 1.h); and six traffic ticket in collection (SOR 1.k through 1.p). Her deliberate failure to disclose her delinquent accounts satisfies the above disqualifying condition.

AG ¶ 16 describes conditions that could mitigate the personal conduct security concerns:

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

None of the mitigating conditions is fully applicable to the facts in this case and they do not mitigate the personal conduct security concerns. Applicant's explanations for her failure to disclose her delinquent accounts and her purportedly exculpatory statements in her December 2016 interview, in her SOR answer, and at her hearing are inconsistent with the record evidence.

Applicant claimed that she did not become aware of most of her delinquent debts until she obtained her credit report in October 2016. I find her ignorance claim not credible. It would make no sense for Applicant to forgo and not attempt to recover her one-month rent deposit when she vacated her apartment. Furthermore, she was aware

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

that she took four student loans that she had not paid, and that she had six outstanding traffic tickets. Applicant's testimony implies that she was in settlement negotiations with both her student loan creditor and the agency collecting the traffic tickets before she submitted her 2016 SCA.

Applicant was required to disclose her delinquent debts in her February 2016 SCA. She failed to do so because she believed the information would raise financial considerations security concerns that could adversely impact her eligibility for a clearance. Applicant's falsification is a serious offense (felony), it did not occur under unusual circumstances, and it continues to cast doubt on her reliability, trustworthiness, and good judgment.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant, 52, has been employed with federal contractors for some time, but this is her first SCA. She demonstrated sufficient financial responsibility to mitigate those concerns. However, she deliberately falsified her 2016 SCA when she failed to disclose her financial problems. Her falsification demonstrates questionable judgment, untrustworthiness, unreliability, and an unwillingness to comply with rules and regulations, all of which shows that she may not properly safeguard classified information.

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.p:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge