



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



In the matter of:)
)
) ISCR Case No. 17-02395
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

10/10/2018

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct). Applicant's eligibility for a security clearance is denied.

Statement of the Case

On March 9, 2016, Applicant submitted a security clearance application (SCA). On August 18, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct.) 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on January 12, 2018, and she admitted SOR ¶¶ 1.a - 1.h. She denied SOR ¶¶ 1.k, 1.l, and 1.m. Under Guideline E, she admitted SOR ¶¶ 2.a – 2.e, and she denied SOR ¶¶ 2.f and 2.g. Applicant attached criminal court records with her response. Applicant requested that her case be decided by an administrative judge on the written record in lieu of a hearing. On February 21, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant on February 22, 2018. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. Applicant provided a handwritten response to the FORM on March 19, 2018, which I labeled as Applicant Exhibit (AE) A. She did not attach any supporting documentation with her response. Applicant did not object to Items 1 through 8, and the Government did not object to AE A, all of which I admitted into evidence. The DOHA Hearing Office assigned the case to me on June 7, 2018.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact:

Applicant is 35 years old. She has been employed by a DOD contractor as a security officer since April 2016. She was on active duty in the U.S. Navy from 2001 to 2009, and received an honorable discharge. She held a DOD security clearance while she was enlisted in the Navy. Applicant was in the Navy Reserves from February 2010 to March 2011. She received an administrative separation for unsatisfactory participation in drills. She remained unemployed until April 2013, and she listed on the SCA that she was attending school during this time. Applicant was married in July 2003, and divorced in October 2004. She married again in March 2005 and was divorced in November 2014. She and her wife married in November 2016. She has three children, ages 13, 12, and 9. (Items 3, 4)

The SOR alleges that Applicant has 13 delinquent accounts, to include a past-due student loan. The SOR debts total about \$37,273. The debts alleged under Guideline F are supported by the credit bureau reports in evidence. On her March 2016 SCA, Applicant failed to disclose any adverse credit information under the financial section, as required. (Items 1, 3, 5, 6)

During Applicant's March 2017 background interview, she disclosed that she was unemployed from December 2015 to April 2016, but she was supported by her wife at the time. Applicant was asked by the investigator whether she had ever abandoned her employment. Applicant disclosed that she stopped reporting to U.S. Navy Reserve drills due to her inability to find a babysitter for her children. This led to her administrative separation for unsatisfactory participation in drills in March 2011. Applicant claimed that she did not disclose this information on her 2016 SCA because she forgot about it. (Items 2, 3, 4)

Applicant volunteered during her March 2017 background interview that she had delinquent debts. She did not list any of her delinquent accounts on her SCA because she misunderstood the financial questions and thought they pertained to her bank account only. Applicant admitted owing a tuition bill to a beauty academy she attended from 2014 to 2015. She thought the tuition would be paid by her GI bill. She also owed a substantial utility bill. Applicant had an electricity account put in her name while living with friends. Her friends did not pay their share of the electricity bill. Applicant no longer associates with her former roommates, and she had no plans to pay this utility debt. Applicant claimed that she also had no plans to pay on a car loan account after her ex-husband fraudulently added her name as a co-signer on the car loan. He later filed for bankruptcy, and the creditor is now requesting that she pay this delinquent account. Applicant stated that her financial delinquencies developed, in part, during the 2010 to 2014 time period when she was having a personal crisis. She was separated from her spouse, raising three children with no support from her family, and she could not find stable employment. Applicant asserted that her financial problems would not recur because she is currently in a stable relationship with her wife and she has full-time employment. (Item 4)

In Applicant's March 2018 response to the FORM, she claimed that she had paid off some of her delinquent accounts, to include two medical bills totaling \$578, and an insurance collection account for \$64. Applicant failed to provide any supporting documentation with her response, and I was unable to match the two medical accounts with any delinquent medical debt alleged in the SOR. (Item 1, AE A) Even if the debts were shown as fully paid SOR accounts, Applicant's remaining debt balance under Guideline F is outstanding in the amount of about \$36,631. Applicant did not provide any evidence showing that the debts alleged in SOR ¶¶ 1.a - 1.m are being resolved, paid, or legitimately disputed.

The SOR alleges under Guideline E that Applicant was arrested on four occasions for assault (domestic violence) between 2007 and 2012. She was required to undergo domestic violence counseling in 2007 through the U.S. Navy. (SOR ¶¶ 2.a, 2.b, 2.c, and 2.e.) The SOR also cites her administrative separation in March 2011 from the U.S. Navy Reserves for a pattern of rule violations (missing drills). (SOR ¶ 2.d.) Applicant admitted all of these allegations. Applicant also is alleged to have intentionally falsified her 2016 SCA by failing to list her 2012 arrest for assault, and by failing to disclose her delinquent financial information, as required. (SOR ¶¶ 2.f and 2.g) Applicant denied both falsification allegations. She explained [in her Answer or FORM response] that she omitted the 2012 assault arrest because she misunderstood the question. Similarly, Applicant said she omitted her delinquent financial accounts because she believed the questions pertained to her bank account only. (Items 2, 3, 4, 7)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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 national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 Executive Order 10865 provides that 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 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. . . .

The guideline notes several conditions that could raise security concerns. In assessing Applicant's case, I considered the following potentially disqualifying condition:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

Applicant accumulated over \$37,000 of delinquent debt with 13 creditors, as alleged in the SOR. The above disqualifying conditions apply.

The financial security concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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, 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 counseling for the problem from a legitimate and credible source, such as a non-profit credit counselling 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; 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 accumulated significant debt due to what she termed a “personal crisis,” i.e., divorce, unemployment, and raising three children by herself, from 2010 to 2014 without the benefit of family support. These conditions were largely beyond her control. However, in order to receive full credit under AG ¶ 20(b), Applicant must also show that she acted responsibly under the circumstances. Applicant has been employed full-time since April 2016. She was **put on notice of her delinquent accounts during her background interview** in March 2017. The only debts Applicant claimed to have satisfied a full year later include three accounts for a minimal amount, and these claims are not sufficiently documented. Applicant’s current delinquent debt totals over \$36,000. Applicant’s failure to take responsible action with her creditors over an extended period of time casts doubt on her reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and (b) do not apply.

There is no evidence Applicant received financial counseling. It is also apparent that her financial difficulties are not under control. Applicant claimed to have paid some medical accounts, but I was unable to link her payments to any of the SOR accounts. There is no evidence to show that Applicant initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve her outstanding debts. AG ¶¶ 20(c) and (d) do not apply.

AG ¶ 20(e) is not established. Applicant stated that her ex-husband fraudulently added her name as co-signer for a car loan. (SOR ¶ 1.b) She provided no documentation to substantiate her legitimate claim that she is not liable for this debt due to fraudulent activity. Applicant also has a substantial delinquent utility account in her name that she refuses to pay after her former roommates failed to pay their share of the bill. (SOR ¶ 1.c) Applicant has failed to provide any documentation, such as a complaint filed in the legal system, a demand letter to the creditor, or to her former roommates, in her effort to dispute her responsibility for the money owed.

Guideline E, Personal Conduct

AG ¶ 15 expresses 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 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 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 . . . used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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 individual may not properly safeguard classified or sensitive information; and

(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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . .

(2) any... violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations.

Applicant has four arrests for violent behavior, and an administrative separation from the U.S. Navy Reserves in 2011 due to a pattern of rule violations. Applicant is also familiar with the security clearance application since she held a DOD security clearance while in the U.S. Navy. Her claims of misunderstanding clear, concise questions on the current security application are not credible. The two allegations of falsification of her 2016 SCA are substantiated. The above disqualifying conditions apply.

AG ¶ 17 sets forth potentially applicable mitigating conditions under Guideline E:

(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; and

(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.

As to the falsification alleged in SOR ¶¶ 2.f, and 2.g, AG ¶ 17(a) does not apply. Applicant's explanation for her omissions on the 2016 SCA was that she misunderstood the questions. Although not cited in the SOR, Applicant also failed to disclose on the SCA that she was administratively separated from the U.S. Navy Reserves in 2011 due to her failure to report to drills. Her explanation for this omission is that she forgot about it.¹ I find Applicant's explanations are not credible, and that her omissions of adverse information were intentional.

Applicant has several criminal arrests for violent conduct. (SOR ¶¶ 2.a, 2.b, 2.c. and 2.e). Her most recent arrest was in 2012 and occurred after she completed a required domestic violence treatment program in 2007. Although she has not been arrested for domestic violence in six years, her conduct continues a pattern of her inability to follow laws, rules, or regulations. I find that more time is needed to show that Applicant is fully rehabilitated. Her anger and violence did not occur under "unique" circumstances. It occurred after she was involved in a disagreement with her domestic partners. SOR ¶ 2.d, alleges her administrative separation from the U.S. Navy Reserves in 2011 for a pattern of rule violations. Until such time has passed to show full rehabilitation, there is a strong possibility that her inability to follow laws, rules, or regulations, may likely recur. AG ¶¶ 17(c) and 17(d) do not apply.

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(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

¹ See ISCR Case No. 08-09232 at (App. Bd. Sep. 9, 2010)("[A] Judge may nevertheless consider unalleged conduct for certain limited purposes. These include assessing an applicant's credibility, evaluating his evidence in mitigation, and considering the extent to which an applicant has demonstrated rehabilitation.").

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 Guideline F and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(d) was addressed under that guideline, but some warrant additional comment.

Applicant is 35 years old and employed by a DOD contractor as a security officer since April 2016. She accumulated debt over time, and currently has over \$36,000 of debt owed to numerous creditors. She has made very little effort to resolve, pay, or legitimately dispute her delinquent accounts. Although applicants are not required to show they have paid all delinquent debts alleged in the SOR, they should, at the very least, provide a plan indicating how they intend to pay their delinquent debts coupled with documented evidence confirming that the plan is underway. Applicant also has a history of failing to follow rules, laws, and regulations. She has several similar domestic violence arrests, and was not truthful about disclosing adverse information on her SCA, as required.

Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude she failed to mitigate the security concerns arising under Guideline F, (Financial Considerations), and Guideline E, (Personal Conduct.)

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-m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-g:	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 a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge