



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



In the matter of:)
)
) ISCR Case No. 17-03638
)
Applicant for Security Clearance)

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: *Pro se*

10/01/2018

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the security concerns raised by her history of financial problems and the intentional falsification of her security clearance application. Clearance is denied.

Statement of the Case

On December 8, 2017, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations and personal conduct guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to revoke her security clearance.

Applicant timely answered the SOR and requested a hearing. At the hearing, convened on June 12, 2018, I admitted Government's Exhibits (GE) 1 through 4 and

¹ The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective June 8, 2017.

Applicant's Exhibits (AE) A through D, without objection. DOHA received the transcript (Tr.) on June 18, 2018.

Procedural Matters

SOR Amendment

Department Counsel moved to withdraw SOR ¶¶ 1.j through 1.l because the allegations are duplicative of SOR ¶¶ 1.d through 1.f. The motion was granted without objection from the Applicant.²

Findings of Fact

Applicant, 49, has worked for her current employer, a federal contractor since June 2017. She was previously granted a security clearance in 2007, in connection with a previous period of employment with another federal contracting company. She held access to classified information for approximately five years. She completed her most recent security clearance application in May 2017. She did not disclose any derogatory financial information. The ensuing investigation revealed that Applicant has a history of financial problems dating to the early 2000s, including at least eight collection accounts and one vehicle repossession. The SOR also alleges that the Applicant is indebted to nine creditors for approximately \$12,100, and that she filed for and received Chapter 7 bankruptcy protection in 2005. The largest debt, SOR ¶ 1.i (\$7,311), is for a December 2014 vehicle repossession.³

Applicant's financial problems began in around 1999 when her husband was diagnosed with a serious illness. Although they had insurance, the couple was responsible for almost \$50,000 in medical expenses. In 2000, Applicant's husband returned to work, but lost his job shortly thereafter. He previously earned \$25 per hour and could not find a job earning the same pay. He remained unemployed for a year. At the time, Applicant earned \$12 per hour. Their annual household income decreased from approximately \$72,000 annually to less than \$25,000, which was not enough to support the family of five. In 2005, taking the advice of an attorney, Applicant and her husband filed for bankruptcy protection in September 2005. Their petition was successfully discharged in December 2005.⁴

After the bankruptcy, Applicant's finances remained stable for approximately six months, until her husband lost his job. Both Applicant and her husband have sporadic employment histories. Between 2004 and 2017, Applicant has held 11 jobs and experienced 6 periods of unemployment, the longest of which lasted from May 2004 to March 2008. Her most recent period of unemployment, almost two months, preceded

² Tr. 8.

³ Tr. 17; GE 1-4.

⁴ Tr. 17-20, 33.

her current job. In the last 13 years, Applicant's husband has held at least 20 different jobs and has experienced at least 10 periods of unemployment.⁵

When Applicant completed her May 2017 security clearance application, she did not list any derogatory financial information in response to Section 26: Financial Records. She interpreted the questions as seeking information about liens against property.⁶ Because she does not own any property, she did not believe the questions applied to her situation and skipped the next set of questions regarding delinquencies involving routine accounts, which sought information about automobile repossessions and collection accounts.⁷ At hearing, Applicant testified that she did not intend to falsify her security clearance application.⁸

After the subject interview in August 2017, Applicant contacted her creditors to establish payment plans and made arrangements for SOR ¶¶ 1.c, 1.g, and 1.h. She did not contact her largest creditor regarding the vehicle repossession (SOR ¶ 1.i) because the loan servicer went out of business and she did not know how to contact the lender directly. Applicant did not make payment arrangements for the medical accounts alleged in SOR ¶¶ 1.d through 1.f, because the creditor informed her the accounts had been charged off, causing Applicant to believe that she no longer owed the outstanding balances. Applicant paid \$142.50 toward SOR ¶ 1.g, a utility account, and made one \$25 payment to SOR ¶ 1.c, a satellite television service. However in December 2017, her husband lost his job, reducing the household income from \$80,000 to \$40,000. In April 2018, one of Applicant's adult children moved back home. As of the hearing, Applicant's husband remained unemployed.⁹

Applicant is very involved in her church community. She is a ministry leader and considered by her fellow congregants to be of good character. Her supervisor believes that Applicant is a model employee who is honest and trustworthy.¹⁰

⁵ Tr. 21-23.

⁶ Section 26 Financial Record is comprised of six questions covering gambling, taxes, issues with an employer travel or credit card, assistance for financial difficulties, delinquency involving enforcement, and delinquency involving routine accounts. In pertinent part, the questions involving delinquency involving enforcement asks applicants, "in the past seven (7) years, [have] you had a lien placed against your property for failing to pay taxes or other debts?"

⁷In pertinent part, Section 26: Financial Records: Delinquency Involving Routine Accounts asks, "Other than previously listed, have any of the following happened? . . . In the past seven years, you had any possession or property voluntarily or involuntarily repossessed or foreclosed? ...[Y]ou had bills or debts turned over to a collection agency?"

⁸ Tr. 30, 35.

⁹ Tr. 26-28, 31-36; Answer.

¹⁰ AE A- D.

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 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.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Unresolved delinquent debt is a security concern because “an individual who is financially over extended is at risk of having to engage in illegal acts to generate funds.”¹¹ Financial difficulties have proven to be a significant motivating factor for espionage or attempted espionage.¹² The Government does not have to prove that an applicant poses a clear and present danger to national security,¹³ or that an applicant poses an imminent threat of engaging in criminal acts. Instead, it is sufficient to show that an applicant has a history of unresolved financial difficulties that may make her more vulnerable to financial pressures.¹⁴ The record supports a finding that Applicant has a history of financial problems resulting in a 2005 bankruptcy and delinquent debts that she is unable to repay.¹⁵

Applicant receives partial mitigation because the circumstances that caused her financial problems were beyond her control. The resulting delinquent debts are not indicative of lavish spending, reckless, or irresponsible behavior. Between 2005 and 2017, Applicant and her husband have experienced sporadic employment with multiple periods of unemployment. However, Applicant’s financial problems are ongoing. And although she is willing, Applicant does not have the means to address her delinquent debts at this time.

Guideline E, Personal Conduct

An applicant’s lack of candor or dishonesty raises questions about her reliability, trustworthiness, and his ability to protect classified information. Of special interest in any adjudication is an applicant’s failure to provide truthful and candid answers during the security clearance process.¹⁶ The SOR alleges that Applicant intentionally failed to disclose derogatory financial information on her May 2017 security clearance application. Specifically, Applicant failed to disclose information about any of her delinquent accounts, including a vehicle repossession in response to Section 26: Financial Record. The record supports a finding that Applicant intentionally falsified her security clearance application.¹⁷

¹¹ AG ¶ 18.

¹² ISCR Case No. 96-0454 (App. Bd. Feb. 7, 1997).

¹³ See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

¹⁴ See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989)

¹⁵ AG ¶¶ 19(a) and (c).

¹⁶ AG ¶ 15.

¹⁷ AG ¶16(b).

A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if the person genuinely misunderstood the question. Applicant claims that the omission was based on a misunderstanding of the question. However, Applicant is a prior clearance holder and has completed a security clearance application in the past. She should have known the importance of providing full and complete answers to each question on the application and taken care to do so. Furthermore, the language of the question is clear on its face. A reasonable person with Applicant's history of financial problems, reading the same question, would have understood that applicable delinquent accounts should have been disclosed.

Whole-Person Concept

Accordingly, doubts remain about Applicant's security worthiness. In reaching this decision, I have considered the whole-person factors at AG ¶ 2(d). Ultimately, Applicant failed to meet her burdens of production and persuasion. Because the security concerns raised in the SOR remain, following *Egan*¹⁸ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a – 1.i, 1.m:	Against Applicant
Paragraph 2, Personal Conduct	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge

¹⁸ *Navy v. Egan*, 484 U.S. 518 (1988).