



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



In the matter of:)	
)	
)	ISCR Case No. 20-01451
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: *Pro se*

07/01/2021

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline G, alcohol consumption, but failed to mitigate them under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On December 2, 2020, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline G, alcohol consumption. 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.

On January 20, 2021, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on March 4,

2021. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 7. (Item 1 is the SOR) Applicant did not submit a timely response. There were no objections by Applicant, and all Items are admitted into evidence. The case was assigned to me on June 1, 2021.

Findings of Fact

Applicant admitted all of the SOR allegations except the amount owed in ¶ 1.c. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 35 years old and a high school graduate. She is unmarried and has no children. She served in the Navy from 2003 to 2015 and received an honorable discharge in the paygrade E-5. Her discharge paper (DD 214) noted in the narrative that the reason for separation was due to unsatisfactory performance. Applicant held a security clearance while in the military. (Items 3, 4)

In January 2013, Applicant was charged with driving while intoxicated (DWI) (first offense) after recording a .08% on a breathalyzer. The charge was reduced to Road Speed in excess of 80 miles per hour. She was given a 30-day suspended sentence, unsupervised probation for three years, a \$586 fine and court costs. (Items 3, 4, 6)

In June 2015, Applicant consumed three double Jack Daniels with coke before leaving a bar. She did not initially feel the effect, but while driving she began to feel intoxicated. She hit a curb and the airbag on her car deployed. A police officer arrived on scene. She was arrested for DWI (first offense). Applicant pleaded guilty and was given a 365-day sentence that was suspended, two years of unsupervised probation, one year of a restricted license, an ignition interlock system, and was ordered to attend counseling, along with fines and court costs. She attended Alcoholics Anonymous for about two weeks as part of the sentence. It is unknown if Applicant was still on probation from her 2013 offense. (Items 3, 4, 7)

Applicant was also disciplined by her command at a Uniform Code of Military Justice Article 15 hearing. She was found guilty of Article 111, reckless or drunken operation or control of a vehicle. She was reduced one paygrade to E-5, forfeited half a month's pay for two months, and 45 days restriction and extra duties. She was required to attend a 35-day Substance Abuse Rehabilitation Program (SARP), which is an inpatient alcohol treatment program. She completed the program in August 2015 and was required to attend AA classes and abstain from consuming alcohol. (Items 3, 4, 8, 9)

SOR ¶¶ 2.d and 2.e alleged Applicant received Level III substance abuse treatment at a Naval medical facility from July 2015 to August 2015, was diagnosed with Alcohol Disorder Moderate to Severe, and she was required to abstain from alcohol consumption. The record does not provide evidence of the identity or the qualifications of who made the diagnosis. The intake form from the Level III SARP states that the program

is for patients who have been diagnosed with moderate to severe substance use disorders. The aftercare forms state that the continuing care process takes place over 12 months and is designed to optimize the participant's success in maintaining sobriety/abstinence and therapeutic gains. There is no evidence that Applicant was required to abstain from alcohol consumption after the 12-month aftercare program was completed. There is insufficient evidence to support the allegations in SOR ¶¶ 2.d and 2.e and I find in Applicant's favor. (Items 4, 8, 9)

Applicant received an unfavorable performance evaluation after her DWI conviction and was removed from her position because it required that she have access to nuclear information. She could no longer work in her rate without this access and declined to convert to a new rate, so she separated from the Navy. (Items 3, 4)

Applicant was interviewed under oath by a government investigator in October 2018. During the interview she described her alcohol consumption as three to four drinks a week, on weekends and in social settings. She intended to continue light, social drinking, but not to intoxication. She intended to call a rideshare service and not drink and drive. Applicant did not provide more recent information regarding her alcohol consumption. (Item 4)

While serving in the Navy, Applicant received a reenlistment bonus. Applicant and the Defense Finance and Accounting Service (DFAS) disagree on the amount. DFAS contends it was \$42,000. Applicant contends she only received \$21,000 of the amount. In her January 2017 security clearance application, she stated:

My W-2 was wrong. I'm still fighting this. My previous W-2 annotated that I had received approx[imately] \$42,000 in addition to my actual earnings. So it looks like I did not pay taxes on the \$42,000, but I never received that money. (Item 3)

She further stated: "I am still in contact with the military about fixing my old W-2. I have also had contact with the IRS regarding this issue." (Item 3) Applicant stated under section 26 of her SCA that "the account is closed and repayment of correct amount was accomplished via docking my pay whilst still in the Navy." (Item 3) She said: "Have not been sent anything such as a bill so that I can make payment. Hope to have issue completely resolved within 6 months." (Item 3)

In Applicant's 2018 background interview she stated that she was unaware of the debt until January 2017 when DFAS directed her pay be garnished until the entire amount was recouped. Her September 2019 credit bureau report reflects a balance owed of \$19,058. It is unknown if Applicant's current pay is being garnished. She was required to repay the bonus because she was discharged from the military before completing her enlistment. The bonus amount affected Applicant's income and was reflected on her 2015 W-2 form. (Items 2, 3, 4, 5)

Applicant failed to file her federal and state income tax returns in 2015 because she disagreed with the amount reflected on her 2015 W-2 form, which she said included her reenlistment bonus. Applicant failed to file her 2016 through 2019 federal and state income tax returns on the premise that she needed her 2015 tax return filed before she could process any of the following tax years. In her September 2020 answers to government interrogatories, Applicant stated that she had “paid more than the half that I received back in 2014.” (Item 4) She stated that she was attempting to determine who to contact, what forms to complete, and where to send them. She stated once she corrected the 2015 tax year information, she would fix the following years. In her answer to the SOR, she stated that she paid in excess of \$30,000 toward the debt. Applicant did not provide any documentary evidence to substantiate her claim of payments or to show actions she may have taken in the past to resolve the debt with DFAS or to file her delinquent federal and state income tax returns. However, the credit report reflects that the balance on the amount originally owed (presumably \$42,000) has decreased, so payments have been received. (Items 3, 4)

The IRS provides information on their website regarding what to do if a person failed to file their tax return. It states: “If you haven’t filed your federal income tax return for this year or for previous years, you should file your return as soon as possible regardless of your reason for not filing the required return.” (Item 10)

Policies

When evaluating an applicant’s suitability for national security eligibility, 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 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 avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 relating to the guideline 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. 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This 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. An individual who is financially irresponsible may also be

irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (c) a history of not meeting financial obligations; and
- (g) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant failed to timely file her 2015 through 2019 federal and state income tax returns. She has failed to resolve a delinquent debt for a reenlistment bonus she received in 2014. There is sufficient evidence to support the application of the above disqualifying conditions.

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 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;
- (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; 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.

Applicant admitted she has not filed her 2015 through 2019 federal and state income tax returns because she has a dispute with DFAS about the amount she owes for a reenlistment bonus, and which was reflected on her 2015 W-2. Applicant's dispute does not absolve her from complying with the filing requirements of her federal and state tax returns for the past five years. In 2017 when she completed her SCA, she indicated it would be resolved in six months. She has not provided any documentary evidence to show what actions she has taken to resolve the dispute over the debt, any voluntarily payments she has made toward the debt, or that she has filed her delinquent federal and state tax returns. She indicated her wages were being garnished, but she failed to provide proof of her claim. Her 2019 credit bureau report reflects a \$19,058 debt owed. Her financial issues are not resolved and her conduct casts doubt on her current reliability, trustworthiness and good judgment. AG ¶¶ 20(a) and 20(e) do not apply.

Applicant's financial problems were within her control and a result of her discharge from the military because she could no longer have access to nuclear information after her DWI conviction. She chose not to change her rate and instead was discharged. She had received a reenlistment bonus that she was required to repay. Although she disputes the amount owed, it does not absolve her from complying with the law and filing her federal and state income tax returns, which she has not done for tax years 2015 through 2019. AG ¶ 20(b) does not apply.

Garnishment is not considered a good-faith effort to repay a debt. Applicant has failed to provide evidence that she is actively resolving the debt or that her wages are still being garnished to resolve it. There is no evidence Applicant has received financial counseling or any information about her current finances. Applicant indicated in her SCA that she was in contact with the IRS, but there is no evidence to support her statement. I find none of the remaining mitigating conditions apply.

Guideline G: Alcohol Consumption

AG ¶ 21 expresses the security concern for alcohol consumption:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. I find the following to be potentially applicable:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other

incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder.

Applicant was arrested in January 2013 for DWI. The charge was amended and she was found guilty of Road Speed in excess of 80 miles per hour. She was arrested and convicted of DWI in June 2015. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating condition under AG ¶ 23:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment.

Applicant completed Level III SARP in 2015. In her 2018 background interview she acknowledged that she continues to consume alcohol in moderation and does not drive after drinking, but rather uses a rideshare. There is no evidence that Applicant has had any additional problems with alcohol abuse since her 2015 conviction and discharge from the military. It has been almost six years since her DWI conviction. I find sufficient time has passed and her past issue does not cast doubt on her current reliability, trustworthiness, or judgment. AG ¶ 23(a) applies.

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), 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.

The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. August 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

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 Guidelines F and G in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant has not had any alcohol-related issues since 2015. Sufficient time has elapsed, and she has mitigated the security concerns under Guideline G, alcohol consumption. She has not mitigated the security concerns under Guideline F, financial considerations. Her failure to resolve her debt to DFAS and file her delinquent income tax returns for the past five years raises serious security concerns. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations.

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-1.c:	Against Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a-2.e:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge