



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



In the matter of:)
)
) ISCR Case No. 20-02773
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: Daniel D. Dwyer, Esq.

09/12/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Guideline H, drug involvement and substance misuse, but failed to mitigate the Guideline J, criminal conduct; Guideline M, use of information technology, and Guideline E, personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 19, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse, Guideline J, criminal conduct, Guideline M, use of information technology, 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 on June 8, 2017.

Applicant answered the SOR on April 30, 2021, and requested a hearing before an administrative judge. The case was assigned to me on June 9, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 17, 2022, scheduling the hearing for June 26, 2022, using Microsoft Teams. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 3. Applicant testified and offered Applicant's Exhibits A through T. There were no objections to any of the evidence offered and it was admitted. DOHA received the hearing transcript on August 4, 2022.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 2.a, 2.b, 2.c, 3.a and 4.a. She denied the SOR allegation in ¶ 1.b. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 25 years old. She graduated from college with a bachelor's degree in December 2019. She then pursued and completed a professional certificate in 2021 and was accepted into a master's program, which began in August 2022. She married in 2022 and has no children. She began college in 2015. In about May 2017, she moved to a different state and transferred to a local college in her new state. She also worked part-time as an intern for her present employer, a federal contractor, until she graduated from college in December 2019. After graduation, she was offered a full-time position by her present employer and has worked for them since January 2020. (Tr. 23-29; GE 1; AE F, J, L, M, N)

From approximately September 2015 to May 2017, Applicant used marijuana with varying frequency. She was 18 to 20 years old at the time. She smoked marijuana with friends. She stopped using marijuana when she moved to the new state and distanced herself from the friends with whom she was using it. She credibly testified that she has not used marijuana or any other illegal drug since May 2017 and does not intend to do so in the future. When she got married, her wedding was in the state where she previously lived, and none of her former friends were invited to her wedding. Her husband does not use illegal drugs. She provided a hair follicle drug analysis from June 29, 2022, with negative results for illegal drugs. (Tr. 42-47; AE O)

In August 2016, Applicant was in a car with friends when it was stopped by the police. Marijuana was found in the car. Applicant testified it did not belong to her. She and the other occupants were arrested. She was charged with possession of marijuana with the intent to use. She stated she was confused about the arrest and that is why she denied SOR ¶ 1.b. She said when she went to court a couple of days after the incident, she was told the charges were dismissed. She did not go before a judge or meet with anyone from the prosecutor's office. Her FBI record shows the charge was dismissed. She requested this charge be expunged from her record and it was so ordered by the court in October 2021. (Tr. 47-48, 70-72; GE 3, AE P)

In Applicant's answer to the SOR she explained that in February 2017, she was attending college at X University (XU) in her home state. In her first semester of her sophomore year, she received a D in a course. She felt she deserved a better grade. She had to retake the class in the spring semester and felt the situation was unfair, which caused her not to take the course seriously. On her first test, she received a failing grade. She tried to make up for it, but received a failing grade on her second exam. She knew even if she scored 100% on her final exam, she would still fail the course. At the time, she was working part time in the Office of Information Technology (OIT) at XU. She stated that before considering the ramifications and consequences of her actions, she thought she could use her access in the OIT to change her grade, which she did. In her SOR answer, she said she then felt guilty and an hour later she emailed her professor telling her that Applicant's grade was incorrectly put in the system. Her professor thanked her and corrected the grade. She did not tell the professor that it was her who changed the grade. Two days later, she was summoned to the OIT by managers who confronted her with what she had done. They reported her conduct to XU and the police. She said in her SOR answer that she was unaware that her conduct could lead to serious criminal allegations. She attributed her actions to being immature and she had no excuse. (Tr. 48-49, 73-79; Answer to SOR)

Applicant testified about the specifics of her actions. She gained access to the professor's portal and changed the password on the professor's account so she could change the grade. The professor was notified that her password changed and notified the OIT asking why it had changed. When the OIT became aware, they investigated the action, which was traced back to Applicant's computer and the time she was working. Applicant testified she was aware of the rules and protocol of working in the OIT and her conduct was a violation. When Applicant was confronted by the manager of the OIT regarding changing the password, she initially denied it and did not take responsibility for her conduct. She also denied it to the XU conduct board. At her hearing, she testified that XU conducted an investigation and she was suspended from school at the end of the semester for six months. She received an F in the course. She was permitted to complete her other courses before the suspension. She said she was humiliated and embarrassed. (Tr. 48-49, 73-79)

In March 2017, Applicant was arrested and charged with accessing, falsifying or tampering with data or computer records, a felony, for her actions at XU. She did not tell her parents until months later. A public defender represented her. The prosecutor agreed to accept a Pretrial Intervention (PTI) program, which lasted 30 months. She was on probation and had to contact her probation officer, participate in drug testing, and not commit any offenses. She was able to move to a new state while still on probation, but had to continue to contact her probation officer and was required to notify the probation officer if she got into any trouble. (Tr. 50-53, 79-84)

In June 2018, while still participating in the PTI and working as an intern with her employer, Applicant was arrested for shoplifting. She admits her conduct was selfish and lacked good judgment. She walked into a department store, grabbed four purses, put a small one in her purse, put another over her shoulder, tried to hide one and said the other

she did not try to hide. A security guard stopped her, checked the tags on the purses and the police were called. She was arrested and taken to jail. She called her boyfriend, who later would be her husband. He was upset. She called a bail bondsman, paid the bond, and was released. She testified that she immediately contacted her probation officer and told the officer of her arrest. When she returned to court for the charge, the official from the store failed to appear and the charge was dismissed. She testified that she thought she got away with it and did it again as noted below. (Tr. 52, 84-89)

In October 2018, Applicant was arrested again for shoplifting. She went into a large retail store, put items in her cart and went through the self-checkout aisle. She purchased the items and grabbed extra plastic shopping bags. After completing her purchase and before leaving the store, she went back through the store and filled the bags with items. She then left the store with items she stole and drove away. She was subsequently stopped by the police and was arrested. She testified she did this one other time at the same store about a month earlier and got away with it. She also did it once when she was in high school, got caught, but she was not arrested and was released by the store.¹ (Tr. 55, 89-92)

Applicant testified that she reported the second shoplifting incident to her probation officer. She admitted that after her first shoplifting arrest, she felt she got away with it without consequences after the charge was dropped. In her answer to the SOR, she stated that when she went to court for the October 2018 offense, she asked the judge if there was a diversion program she could participate in that would help her with her “kleptomania-like tendencies”: She entered a Pretrial Diversion (PTD) program that included classes focused on shoplifting. She said it changed her life and forced her to think about why she was doing destructive things and how her actions impacted other’s lives and property. She completed the program in December 2018 and the charge was dismissed. (Tr. 55-57, 92-93; AE R)

Applicant testified that as part of the PTD program it was recommended that she seek therapy, which she did through her college counseling services. She said she attended therapy about once a month for about a year. Discussions were about why she was struggling, adjusting to a new area, family expectations, and feelings of entitlement. (Tr. 107-114)

Applicant completed the PTI program in November 2019 and the felony charge was dismissed. In October 2021, this charge was expunged under the same order as her 2016 drug arrest. (Tr. 54-55; AE P, Q)

Applicant did not report her criminal conduct of misusing information technology or that she was participating in a PTI program to her employer while she was an intern. This offense occurred before she was hired as an intern. She did not report to her employer her shoplifting arrests in June 2018 and October 2018 or that she was participating in a

¹ I will not consider any derogatory information for disqualifying purposes that was not alleged in the SOR, but may consider it when applying the mitigating conditions, in making a credibility determination and in my whole-person analysis.

PTD program. She did not believe she was obligated to report her criminal arrests as an intern and because she was not a full-time employee. She testified that her boyfriend at the time, now her husband, did review the rules to see if he was obligated to report the information and he was not. He did not counsel her to report the information to their employer. She testified that she considered reporting it, but did not want to risk an opportunity to be hired full time. She testified that she has not been involved in any other authorized computer access since her incident at XU. (Tr. 57-59, 94-98, 106-107)

Applicant provided a document to show that the Department of Homeland Security (DHS) gave her a fitness/suitability determination where she has access to a level of sensitive information. She testified she had to complete an Electronic Questionnaires for Investigation Processing in 2021. She said she disclosed her criminal arrests. (Tr. 31-32, 5998-100; AE E)

Applicant provided numerous documents reflecting her exceptional performance while working for her employer. She received 17 awards since October 2019 and her year-end reviews from 2020 and 2021 also reflect her outstanding performance and contribution to the company and its mission. (Tr. 30-35; AE F, G, H, I)

Applicant provided a letter of recommendation from Dr. W from July 2021, that was submitted for Applicant's application for enrollment into the professional certificate program, which she completed. She also provided a letter of recommendation from him for a security clearance. The letter glowingly describes Applicant's academic abilities, motivation, and personal qualities. She is described as a self-starter, a team player, and a problem-solver. She is considered tenacious, hardworking, and dedicated. Dr. W described Applicant as having a solid work ethic, moral character, and is pleasant and confident. He considers her honest and has never questioned her loyalty. She is the epitome of professionalism, intelligence, integrity and dedication. He recommended her for a security clearance. Applicant testified that Dr. W was not made aware of the SOR allegations or her criminal charges. (Tr. 38-40; AE B, K)

Applicant provided a July 2021 character letter from her direct supervisor at work who has known her for four years. He indicated in his letter that he was aware of "her need for a security clearance." He has had regular interaction with her since 2018 and frequently on a daily basis. He described her as being a diligent worker with a strong work ethic and uncompromised integrity. She sets the example for her peers in terms of dedication, trustworthiness, reliability, and stability. She received 10 performance awards from 2020 to 2021, which is unmatched by her peers. Applicant testified that her supervisor was not privy to the allegations in the SOR or her background, and he is only aware of her work history. (Tr. 35-38; AE A)

Applicant provided a recommendation for promotion from Dr. D. It states that Applicant executes high quality technical work, engages in leadership behavior, supports and monitors the team. She motivates others. Dr. D also described different technical accomplishments of Applicant and recommended her for promotion. (Tr. 40-42; AE C)

Applicant's husband provided a statement on behalf of her. He has known his wife since 2017. He works for the same company. He describes her as one of the most honorable and hardworking individuals he has ever known. He was aware of some mistakes she made and that she exercised poor judgment when she was younger. He is aware of mistakes she made in 2018. He stated she can be trusted. If he did not believe that she could be trusted, he would not be married to her. He would not jeopardize the security clearance he holds. She volunteers for difficult tasks and rises to the occasion. She is a valuable asset to the company. (Tr. 63-67; AE D)

Applicant provided a copy of her credit report that reflects she pays her bills and has no financial issues. She purchased a vehicle in 2019 and paid the loan in 2020. She was responsible for paying her tuition and her father helped her with half of it. She worked and went to school at the same time and was responsible for her monthly expenses. (Tr. 60-62; AE S, T)

Applicant stated in her Answer to the SOR and testimony that she has received accolades for her outstanding performance and awards that were provided as exhibits. She works on important projects that impact the public interest. She volunteers her time for students in the science, technology, engineering and mathematics (STEM) curriculum for grades kindergarten through 12th grade as a mentor and judge in competitions. She also mentored an all-girls robotics team. She volunteers at work and participates in different teams that help others. (Tr. 62-63)

Applicant provided a lengthy and detailed Answer to the SOR. In it, she repeatedly takes full responsibility for her conduct and makes no excuses. When testifying she did the same and was candid. She attributed her drug involvement with being around the wrong people and has put that in her past. She says she has turned her life around. The PTD class forced her to reflect on her life and she saw people like her who were also struggling with their choices. She found it beneficial and it was an epiphany in her life. She attributes her criminal conduct to being young, immature, and selfish. She says she is no longer that person, and she has learned her lessons and grown from her mistakes. She is thankful that the system gave her a second chance to restart her life.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the 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 H: Drug Involvement and Substance Misuse

The security concern relating to the guideline for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual’s reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) any substance misuse; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used marijuana from about September 2015 to May 2017 with varying frequency. She was arrested in August 2016 for possession of marijuana with intent to use. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security. The following mitigating conditions under AG ¶ 26 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome the problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were being used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant credibly testified that she has not used any illegal drug, including marijuana since May 2017. She acknowledged her past uses and no longer associates with any of the people she used drugs with and has moved to a new state. It has been over five years since her last use. This is a significant period of time to conclude that future use is unlikely. In addition, Applicant no longer associates with the friends she would use drugs with and lives in a different state. The above mitigating conditions apply.

Guideline M: Use of Information Technology

The security concerns relating to the guideline for use of information technology is set out in AG ¶ 39:

Failure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology includes any computer-based, mobile,

or wireless device used to create, store, access, process, manipulate, protect, or move information. This includes any component, whether integrated into a larger system or not, such as hardware, software, or firmware, used to enable or facilitate these operations.

AG ¶ 40 provides conditions that could raise security concerns. The following are potentially applicable:

(b) unauthorized modification, destruction, or manipulation of, or denial of access to, an information technology system or any data in such system;

As an employee at the OIT for XU, Applicant was authorized access to its computer system. She was not authorized to access her professor's computer account and change its password and then change her grade for a class. There is sufficient evidence to support the application of the above disqualifying condition.

The guideline also includes conditions that could mitigate security concerns. The following mitigating conditions under AG ¶ 41 are potentially applicable:

(a) so much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the misuse was minor and done solely in the interest of organizational efficiency and effectiveness;

(c) The conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification to appropriate personnel; and

(d) the misuse was due to improper or inadequate training or unclear instructions.

Applicant's conduct was deliberate and intentional and was done for her own self-interest. She was aware of the rules and procedures of the OIT. When she was caught, she denied that she had accessed the computer system to change her grade. She was arrested and charged with a felony. Her conduct was not minor and did not happen under unusual circumstances. It casts doubt on her reliability, trustworthiness and good judgment. She was aware that her conduct was prohibited. None of the above mitigating conditions apply.

Guideline J: Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and the following are potentially applicable:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

In March 2017 Applicant was charged with accessing, falsifying or tampering with data or computer records, a felony. In June 2018, Applicant was arrested for shoplifting. In October 2018, Applicant was again arrested for and charged with shoplifting. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant admitted she accessed her professor's computer, changed her professor's password, and then changed her grade. The fact that she told her professor there was a mistake reflects some of the guilt she was feeling, but she also denied her conduct when confronted by OIT and XU. She was on probation for 30 months through a PTI program. She was given a second chance. While on probation, in May 2018, she

shoplifted. Because the witness failed to appear the charge was dismissed. She was given a third chance. Instead of realizing that she received a break, she shoplifted again four months later. She asked the judge to participate in a PTD program, which was granted. Applicant attributes her conduct to mistakes and being young, immature, and selfish. I have considered that she has been successful at her job and the awards she has received. However, despite being given a second chance under the PTI program, she was not deterred and continued to commit criminal conduct. These offenses are not youthful indiscretions that can be attributed to merely making a mistake or being immature. I have considered that her last offense occurred in October 2018. However, Applicant committed three serious offenses, one a felony. All of these offenses are the type that reflect on whether she can be trusted and exercise good judgment. I have also considered the character letters that Applicant provided and that none of the people are aware of her criminal conduct. I cannot find that the above mitigating conditions apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concerns 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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(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

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The facts alleged under the drug involvement or substance misuse, criminal conduct, and the use of information technology guidelines are cross-alleged under the personal conduct guideline. I have mitigated the drug involvement and substance misuse security concerns. The facts detailed above support an adverse determination under both the criminal conduct and use of information technology guidelines and therefore AG ¶ 16(c) does not apply. However, AG ¶16(e) does apply because Applicant's personal conduct in misusing information technology and shoplifting creates a vulnerability to exploitation, manipulation, or duress. It is clear that her colleagues are unaware of her past criminal conduct, which could be exploited.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on 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;

(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.

Applicant's criminal conduct and misuse of technology was not minor and involved violating a trust. The same analysis provided in the above guidelines is applicable here. Her conduct casts doubt on her reliability, trustworthiness and good judgment. Applicant was candid in her testimony about her conduct and took responsibility for her actions, but attributed them to being immature. These offenses go beyond being immature. She has participated in counseling to understand her conduct. These are positive acts, but they do not negate the seriousness of Applicant's past conduct and how they reflect on her trustworthiness. Despite some mitigation, I find Applicant's personal conduct remains a security concern.

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.

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

Applicant is 25 years old. She testified that she believes she has turned her life around by making changes. She is excelling at work and has received awards and accolades. There is some mitigation through rehabilitation. However, it does not negate the seriousness of her conduct that goes right to the essence of holding a security clearance. She failed to meet her burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the Guideline H drug involvement and substance misuse security concern, but failed to mitigate the security concerns arising under Guideline M, use of information technology, Guideline J, criminal conduct, 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 H:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant
Paragraph 3, Guideline M:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT

Subparagraph 1.a:

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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge