



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



In the matter of:)
)
) ISCR Case No. 20-03303
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

09/12/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Eligibility for access to classified information is granted.

Statement of the Case

On September 21, 2021, the Defense Counterintelligence and Security Agency issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E, personal conduct, and F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 September 29, 2021, Applicant answered the SOR, and she 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 February 8, 2022. 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 1 through 7. Applicant submitted a response to the FORM and provided Applicant Exhibits (AE) A through G. There were no objections to any of the evidence and all Items and AEs are admitted into evidence. The case was assigned to me on May 5, 2022.

Findings of Fact

Applicant admitted all of the SOR allegations with explanations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 33 years old. She has had a cohabitant since 2019 and does not have children. She earned her General Education Development diploma in 2007. She disclosed in her March 2020 security clearance application (SCA) that she had worked full time for a public safety center (PSC) since 2018. She previously worked for the PSC from April 2012 to September 2013 and from August 2011 to December 2011. She disclosed that she also has worked full time for a federal contractor since February 2020. (Item 2)

In February 2018, Applicant was terminated from her employment as a 911 dispatcher for a city. She received written warnings for infractions such as in February 2018 she used her work email to message a friend while on duty; in December 2017 she ran the wrong tag number on a vehicle; in July 2015 she did not respond to an officer's radio traffic; and in February 2014 she did not start backup for a unit on a stolen vehicle. She is not eligible for rehire. (Item 1)

Applicant admitted that in February 2014 she did not start a backup unit for a stolen vehicle. She stated in her SOR answer that she ran the vehicle tags and used a computer-aided dispatch system that she later learned is not as reliable. Another officer was on his way to the scene and was less than two minutes away. Applicant was later told by her supervisor that she should have started to send another unit before she advised the officer on scene that the vehicle was stolen. She stated that at the time she had only recently been released from training and she had not been in a situation or witnessed one where an officer was alone with a stolen vehicle. She said she never intentionally meant to put someone in harm's way and never repeated this conduct. (Item 1)

In July 2015, Applicant did not respond to an officer's radio traffic call. She explained in her SOR answer that she did not hear the call come in over the radio. The requesting officer indicated that he had repeated the request, but Applicant said she did not hear him. Once she did hear him she responded. She stated her actions were not intentional and it is not uncommon for radios to have transmission issues. (Item 1)

Applicant admitted that in December 2017 she ran the wrong tag numbers on a vehicle. She explained in her SOR answer that she heard it incorrectly. Her partner heard it and ran it correctly. Because her partner had already run the tag, Applicant did not do it again. (Item 1)

In her SOR answer, Applicant acknowledged she used her work email to message family and friends while on duty in dispatch. She stated that others in her unit, including the supervisors, were also doing the same and were aware of this conduct. Cellphones had been prohibited in the work area for several months and employees were using email to connect to people while at work. Applicant stated that she was never told that this conduct was prohibited until she was written up for it in February 2018. No other employees were written up. (Item 1)

As part of the Investigative Request for Employment Data and Supervisor Information report from April 2020 regarding Applicant's termination from employment, her manager did not recommend her for a security clearance. The 911 manager of the department stated:

[Applicant] was provided with appropriate initial and ongoing training to maintain first responder safety. [Applicant] disregarded the information provided and created an unsafe work-environment and declined confidence for field responders. (Item 7)

In January 2019, while employed by PSC, Applicant opened a door she should not have and an inmate attempted to escape. She received a written warning from PCS (SOR ¶ 1.a). Applicant admitted in her SOR answer that her intention was not to allow the inmate to escape, but rather she opened the door as other officers with the inmate were approaching the door, and she assumed they were ready to leave the area with the inmate. She attempted to anticipate the officers' needs and acknowledged she was wrong. The inmate moved towards the door when he heard the lock open, but officers immediately closed the door. When Applicant saw her supervisor she told him what had happened and apologized. She also noted that she knew she was in trouble and accepted the consequences. (Item 1)

The SOR alleged Applicant had delinquent debts. Applicant admitted the debts and provided explanations. Her admissions in her SOR answer, interview with a government investigator in March 2020, response to government interrogatories, response to the FORM, and credit reports from March 2020, August 2021, and January 2022 corroborate the delinquent debts. (Items 1-6)

The debts in SOR ¶¶ 2.a (\$220) and 2.b (\$80) are owed to the same creditor. Applicant provided proof that she has resolved these debts. (Item 1)

In Applicant's SOR answer she disputed the debt in SOR ¶ 1.c (\$1,180). She stated that it was likely a medical bill from 2009 or 2010, and she thought it had dropped

off her credit report in 2015, 2016, or 2017. She provided a document showing the debt was removed from her credit report. She did not state that she paid the debt. (Item 1)

The debt in SOR ¶ 1.d (\$6,232) was for a car she purchased in her name for a friend, who was supposed to make the payments, but did not. Applicant was unable to make the payments and the vehicle was repossessed. She said the vehicle was sold at auction and the deficiency was written-off. Her credit reports reflect a balance owed of \$2,929. In her response to the FORM, Applicant provided a document to show she has made a payment arrangement with the creditor to pay \$50 a month to resolve the debt beginning in February 2022. She anticipated being able to make payments of more than \$50, but was advised that if she missed a payment the debt would be sent to collection. She explained that she used Credit Karma to monitor her accounts and this account was not listed under “derogatory marks” so she assumed it was closed even though it showed a balance. Applicant is resolving the account. (Item 1, AE E)

Applicant admitted the debt SOR ¶ 2.e (\$1,590) was on her credit report, but said she had disputed it, and it no longer was on it. She disclosed a debt with this creditor on her SCA. In her FORM response, she acknowledged she held an account with the creditor but was uncertain if the account alleged was the same because the amount owed differed. She said when she disputed it, she believed the credit bureau would confirm the amount owed, but instead it removed it from her credit report. It is not listed on her January 2022 credit report, but is listed on her August 2021 credit report, showing the date of her last payment as July 2014. The debt was likely removed due to its age. (Item 1)

The debts alleged in SOR ¶¶ 2.f (\$493) and 2.g (\$460) are medical debts that are reported on Applicant’s March 2020 credit report. Applicant acknowledged during her background interview that the debts were for medical bills for an emergency room visit and a minor medical procedure that she could not pay. In her SOR answer, she stated she disputed the accounts and they were removed from her credit report. They are not reported on her 2021 or 2022 credit reports. In her response to the FORM, Applicant stated these were debts for dental work, which is inconsistent with what she told the investigator. (Items 3, 4, 5, 6)

The debt in SOR ¶ 2.h (\$363) is for a water bill. In Applicant’s SOR answer, she said she disputed the bill and it was removed from her credit report. It is not listed on her 2022 or 2021 credit reports, but is listed on her 2020 credit report. In her response to the FORM, she said she thought the bill should have been \$70-100, and when she disputed it, they deleted it from her credit report. (AE E)

Applicant stated in her response to the FORM that she regrets not managing her money better when she was younger. She did not realize it could be detrimental to her future. She has been working hard to clear her credit history and past financial mistakes. She is now in a better financial position as she has received several raises and a promotion since working for the federal contractor. She has enough money to pay her expenses. She does not have a car payment or outstanding medical bills. She intends to expedite the payments she owes on the debt in SOR ¶ 2.d.

Applicant provided a letter of commendation from January 2017 from her employer as a 911 operator. It noted that during a particularly dangerous situation where police officers were being shot at and Applicant was the 911 dispatcher, she made sure she knew where every officer was and whether they were okay. The commendation noted that this was not a routine call and she was well-prepared and ready. It also noted she reflected a high degree of professionalism and commented on her outstanding service. Applicant also provided a certificate of appreciation for being named employee of the month for January 2017 from the city where she was employed. (AE D, E)

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 handing 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:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant had eight delinquent debts that she was unable to pay for several years. 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; 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 had numerous delinquent debts that she admitted were on her credit report. She paid the debts in SOR ¶¶ 2.a and 2.b and has a payment plan for the debt in ¶ 2.d. AG ¶ 20(d) applies to these debts. She did not begin to address the later debt until after the SOR. She believed it was closed and she had no further responsibility. Applicant also disputed the other debts alleged in the SOR. They are not reflected on her most recent credit report. Applicant admitted she mismanaged her finances when she was younger, but is now in a better financial position. She is able to pay her expenses and has a payment plan for the largest debt that was on the SOR. She appears to now understand the importance of being financially responsible. I believe future financial problems are unlikely to recur and her finances do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies.

Applicant did not provide sufficient evidence that her financial issues were beyond her control. AG ¶ 20(b) does not apply. She did not provide evidence that she has received financial counseling, but there are clear indications that her financial problems are under control. AG ¶ 20(c) partially applies.

Applicant did not provide specifics as to why she disputed certain debts in the SOR, but she did provide some evidence that some of her debts were deleted from her credit report. AG ¶ 20(e) has some application.

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.

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

(a) 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: . . . (3) a pattern of dishonesty or rule violations.

The SOR alleged that Applicant received a written warning from her employer when she opened a door during an inmate transfer, which she admitted and provided an explanation. She continues to work for this employer. She was also terminated from employment in 2018 after she received written warnings in February 2018 (using email for personal use); December 2017 (failing to run the correct tag number); July 2015 (not responding to an officer's radio transmission); and February 2014 (not starting a backup unit for a stolen vehicle). She was not recommended for a security clearance by her 911 manager. Applicant's use of email for personal use while she was working was in violation of the rules. AG ¶ 16(d) applies to this conduct.

I have reviewed all of the evidence and there is insufficient evidence to conclude that the other conduct alleged in the SOR was intentional. The evidence supports that Applicant may have not done her job very well and made mistakes. The question is whether this is the type of conduct contemplated by the personal conduct security concerns. Not being good at your job is different than exercising questionable judgment, being untrustworthy or unreliable. It may be that she was not suited for the stresses of the job. I do not believe her infractions are the type contemplated under the personal conduct guideline. I find the disqualifying condition does not apply to those allegations.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. The following mitigating conditions under AG ¶ 17 are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior was infrequent, or it happened under 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.

Applicant stated she was unaware at the time that using email for personal use was prohibited. She acknowledged that she violated this rule and there is no evidence she continued to use it after being advised. I find that the offense is minor and happened in 2018 and is unlikely to recur. It does not cast doubt on her reliability, trustworthiness, or good judgment. Both of the above mitigating conditions 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 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 Guideline E and F in my whole-person analysis.

Applicant has had a rocky financial history, but it seems she now has some stability. I believe she understands the importance of paying her bills timely and following through on the status of her debts. Applicant had some difficulties when working for PCS, but I do not believe the infractions raise personal conduct security concerns. I find she mitigated the minor rule violation under the personal conduct security concern. The record evidence does not leave me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns raised 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 E:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.1-2.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge