



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



In the matter of:)
)
) ISCR Case No. 20-02363
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

09/22/2022

Decision

Curry, Marc E., Administrative Judge:

Applicant’s use of alcohol to cope with her abusive marriage led to two alcohol-related charges between late 2015 and early 2016. Applicant successfully completed the probation requirements, is no longer married, and has not had any alcohol-related problems since early 2016. I conclude she has mitigated the security concern related to excessive alcohol consumption.

Applicant’s financial problems also stemmed from her troubled marriage. Although she has made some progress in satisfying delinquent debts, she still owes significant tax debts from 2013 and 2014, and she has yet to file her income tax returns from 2015 to 2017. Under these circumstances, she has failed to mitigate the financial circumstances security concern. Clearance is denied.

Statement of the Case

On February 20, 2021, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial

considerations, and Guideline G, alcohol consumption. The DCSA CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On March 20, 2021, Applicant answered the SOR, admitting all of the allegations, and requesting a decision based on the documentary record, instead of a hearing.

On June 30, 2021, Department Counsel submitted a file of relevant material (FORM), containing eight attachments (Items 1 – 8) in support of the SOR allegations. Applicant received a copy of the FORM on September 24, 2021, and was given until October 24, 2021 to file a reply. Applicant filed an undated reply. (Item 9)

On May 5, 2022, the case was assigned to me. After reviewing the file, I granted Applicant *sua sponte* an extension of the record through the close of business June 24, 2022, to provide additional evidence towards resolving her income tax delinquencies. (See Order (Item 10) On June 23, 2022, Applicant submitted a letter from her accountant, together with a two-page memorandum. (Item 11)

Findings of Fact

Applicant is a 49-year-old single woman. She was married from 2006 to 2018, when she and her husband divorced. (Item 3 at 27) Applicant is a college graduate, earning a degree in 1997. (Item 3 at 17) Since October 2018 she has been working for a defense contractor as an engineer. (item 3 at 18; Item 8 at 2)

Applicant's marriage was extremely abusive. (Item 8 at 7) Her husband was so volatile that when Applicant fled from him in October 2017, she hid her location, blocked his phone number, and was compelled to move several times, as he stalked her and harassed her friends who knew her whereabouts. (Item 8 at 6 - 9) Applicant legally divorced him in July 2018.

Applicant's marital problems and subsequent divorce corresponded with her financial problems, as alleged in the SOR. Specifically, when Applicant prepared to file her first federal and state income tax returns after her 2018 divorce, she discovered that her ex-husband, who was responsible for filing their income tax returns during the marriage, had not filed their federal and state income tax returns from 2015 to 2017, and that she was delinquent on her federal income taxes in the amount of \$19,749 for tax years 2013 and 2014. (Answer at 1 -2; Item 8 at 6-7)

In April 2019, Applicant retained an accountant to help resolve her income tax delinquencies. (Item 10 at 3) The accountant advised her to gather all of her old financial records so that he could review them and prepare the returns. This was a daunting task for Applicant because all of her old financial information were in the home where "she had fled . . . after a final altercation" with her husband in October 2017. (Item 10 at 3) Nevertheless, Applicant, by December 2019, had largely contacted all of the entities, such as mortgage

companies, insurance companies, employers, and banks, that she needed to reconstruct her tax records for 2015 to 2017. (Item 10 at 3)

At or about the time Applicant was reconstructing her financial records, her accountant contacted her ex-husband to persuade him to file his income taxes under “married filing joint” status for tax years 2015 to 2017, explaining that filing jointly would result in a larger deduction and a lower tax rate. (Item 2 at 4; Item 11 at 3) Applicant’s ex-husband initially agreed to provide whatever documents needed to file jointly, but never followed through. By December 2020, he had stopped responding to Applicant’s accountant entirely. (Item 10 at 3)

In February 2022, Applicant’s accountant characterized the filing of Applicant’s back tax returns as “currently in progress,” and anticipated that they would be completed by April 2022. (Item 9 at 2) In March 2022, Applicant’s accountant drafted the tax returns for 2015 through 2017 for Applicant’s review. By June 2022, 15 months after answering the SOR, Applicant had not yet filed the back tax returns for 2015 to 2017. Per her accountant, they anticipate filing these returns by late September 2022. (Item 11 at 1)

Applicant contends that she has filed her tax returns for 2018 to 2021 and that refunds have been applied to her delinquencies for earlier tax years. (Item 11 at 4) Per an IRS tax transcript, \$1,608 of a refund received in 2019 was credited to Applicant’s 2013 delinquency. (Item 4 at 12) There is no additional documentary evidence of payments toward the delinquencies on file. Applicant has not yet submitted a payment plan to the IRS for the 2013 and 2014 tax delinquencies. (Item 11 at 4)

Applicant incurred approximately \$6,600 of delinquent consumer debts over the years, as alleged in SOR subparagraphs 1.d through 1.j. (Item 2 at 2) These debts became delinquent in approximately 2015 when Applicant’s then husband, upon whom she was dependent to help make ends meet, lost his job. (Item 8 at 8)

After Applicant finalized her divorce and obtained a better-paying job in 2018, she began paying the delinquent bills. (Item 8 at 12) Subparagraph 1.d is a utility bill, totaling \$512, Applicant satisfied this bill in February 2022. (Item 9 at 3)

Subparagraph 1.e is a credit card bill, totaling \$454. Applicant satisfied this bill in January 2021, before the issuance of the SOR. (Item 9 at 4)

Subparagraph 1.f is a credit card bill, totaling \$3,916. By February 2021, before the issuance of the SOR, she had satisfied this debt. (Item 9 at 5)

Subparagraph 1.g is a credit card bill, totaling \$534. Applicant satisfied this debt in February 2021, before the issuance of the SOR. (Item 9 at 6)

Subparagraph 1.i is a credit card bill, totaling \$1,203. By March 2022, Applicant had satisfied this debt. (Item 9 at 7)

Applicant contends that she satisfied the debts alleged in subparagraphs 1.h and 1.j, totaling \$1,603. (Item 9 at 1) She provided no documentary evidence.

While Applicant was married, she used alcohol to cope with the emotional trauma caused by her husband's abusive behavior. (Item 8 at 7) Within a three-week period between December 2015 and January 2016, Applicant was arrested twice and charged with operating a vehicle under the influence of alcohol. (Item 8 at 5) The second arrest occurred while the hearing for the first charge was pending. Before both arrests, applicant had consumed two pints of vodka. (Item 8 at 5) Under a plea agreement, the second charge was dismissed, and Applicant agreed to complete an alcohol education class, complete counseling, pay a fine, and serve 18 months of probation. (Item 9 at 2 at 5-6; Item 9 at 13-20) After Applicant completed the terms of the probation, the court dismissed the charges.

Now that Applicant is no longer married, she does not drink alcohol to excess. Instead, she drinks approximately two drinks per month, and spends her free time at the gym rather than at bars. (Item 8 at 6) She has not had any alcohol-related arrests or charges since January 2016.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 ¶ 1(d) 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

Under this concern, "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." (AG ¶ 18) Applicant's history of financial problems triggers the application of AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." Moreover, her failure to file her income tax returns for 2015 to 2017, and her income tax delinquencies trigger the application of AG ¶ 19(f), "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."

The following mitigating conditions are potentially applicable under AG ¶ 20:

- (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;
- (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 made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial problems stemmed from her marital separation and subsequent divorce. She was not aware that her ex-husband had not been filing their joint income tax returns during the marriage until she prepared to file her first tax return as a single person in 2018. Since Applicant finalized the divorce, she has satisfied all of her consumer debts, totaling approximately \$6,700. AG ¶¶ 20(b) and 20(c) apply, and has been working with an accountant to resolve develop an income tax payment plan. I resolve subparagraphs 1.(c) through 1.(j) in Applicant's favor.

Applicant's marriage to an abusive husband significantly contributed to her financial problems, and his stonewalling regarding the resolution of their tax delinquencies has contributed to Applicant's delay in resolving them. Conversely, it has been nearly two years since Applicant concluded that her ex-husband was not going to cooperate with her in filing joint tax returns for 2015 through 2017, and it has been 15 months since the issuance of the SOR, and Applicant has yet to file the returns. Moreover, Applicant has not submitted a payment plan to the IRS for payments of the 2013 and 2014 delinquencies, and the only substantiated payment toward those delinquencies is one payment of \$1,608, applied through a refund from Applicant's 2019 tax return

Applicant's situation with her ex-husband was compelling enough for me to take the unusual step of re-opening the record and extending it to allow her to provide progress towards resolving her tax delinquencies. However, no matter how compelling the circumstances that led to Applicant's financial problems, she still has the burden of proving that her financial problems are under control. Given the amount of tax delinquencies that remain outstanding, and the number of years that she has yet to file the tax returns in question, I cannot conclude that she has mitigated the financial considerations security concern.

Guideline G: Alcohol Consumption

Under this guideline, "excessive alcohol consumption often leads to the exercise of questionable judgment or failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." (AG ¶ 21) Applicant's two alcohol-related arrests trigger the application of AG ¶ 22(a) "alcohol-related incidents away from work, such as driving while under the influence . . .," and AG ¶ 22(c), "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder," apply.

Applicant's heavy drinking corresponded with her troubled marriage. Applicant's most recent alcohol-related arrest was nearly seven years ago, and she has been divorced from her husband, the catalyst for her excessive drinking, for four years. After Applicant's second DUI charge, she completed all of the requirements of the plea agreement, including counseling, and she no longer drinks to excess. Under these circumstances, I conclude that 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 o does not cast doubt on the individual's current reliability, trustworthiness, or judgment," and AG ¶23(b), "the individual acknowledges his or her pattern of maladaptive alcohol use, provides

evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations’,” applies. I conclude Applicant mitigated the alcohol consumption security concern.

Whole-Person Concept

I have considered the whole-person factors in my analysis of the disqualifying and mitigating conditions, and conclude that they do not warrant a favorable conclusion.

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
Subparagraphs 1.e – 1.j:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a – 2.b:	For Applicant

Conclusion

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

Marc E. Curry
Administrative Judge