



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-01767
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R. Karoian, Esquire, Department Counsel  
For Applicant: *Pro se*

October 6, 2022

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**Decision**  
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CEFOLA, Richard A., Administrative Judge:

On October 13, 2020, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On November 24, 2021, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G (Alcohol Consumption), J (Criminal Conduct), and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines, effective on June 8, 2017.

Applicant answered the SOR on December 2, 2021 (Item 2), and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on May 10, 2022. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 5. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government’s evidence. She responded to the FORM on

June 23, 2022, and submitted a one page Response, which I marked as Applicant's Exhibit (AppX) A for identification. Items 1 through 5, and AppX A are admitted into evidence. The case was assigned to me on August 9, 2022.

### **Findings of Fact**

In her Answer to the SOR Applicant admitted the factual allegations in Paragraphs 1.a., 1.c., and 2.b.~2.d. of the SOR, with explanations. She denied the factual allegations in Paragraphs 1.b. and 3.b. Applicant failed to either admit or deny Paragraphs 2.a. and 3.a. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 35 years old, unmarried, and has a 14-year-old child. (Item 3 at pages 7, and 26~27.)

### **Guideline G: Alcohol Consumption, Guideline J: Criminal Conduct & Guideline E: Personal Conduct**

1.a., 2.a., and 3.a. In October of 2016, Applicant admits that she was charged with, and subsequently convicted of, Driving While Intoxicated (DWI). She was incarcerated for ten days, placed on probation for two years, and her license was restricted for 12 months. Her restriction, in part, required the use of an Ignition Interlock System, of which Applicant claims she was unaware. This restriction is evidenced by court records. (Item 4 at page 2.)

1.b., 2.a., and 3.a. About 11 months later, in September 2017, Applicant was charged with and convicted of: Refusal of Breath Test – 2<sup>nd</sup> Offense, Operating a Vehicle on a Suspended or Revoked License, and Operating a Vehicle Without an Ignition Interlock System. (Item 4 at pages 7~16.) She was incarcerated for ten days, and placed on probation for three years.

1.c., 2.a., and 3.a. About six months later, in March 2018, Applicant admits that she was charged with and convicted of Operating a Vehicle on a Suspended or Revoked License. (Item 4 at pages 17~20.)

### **Guideline J: Criminal Conduct**

2.a. See above discussion.

2.b. About a month after her Paragraph 1.c. allegation, noted above, in April of 2018, Applicant admits she was charged and convicted of ASAP Non comply/Show Cause (Operating a Vehicle Without an Ignition Interlock System). She was incarcerated for ten days, and placed on probation for two years.

2.c. A few days later, in April of 2018, Applicant admits she was charged and convicted of Good Behavior/Show Cause (Operating a Vehicle Without an Ignition

Interlock System). She was incarcerated for ten days, and placed on probation for two years.

2.d. Less than two years later, in March of 2020, Applicant admits she was charged and convicted of Misdemeanor Driving Under Revocation or Suspension. Applicant was placed on probation until May of 2022.

### **Guideline E: Personal Conduct**

3.a. See above discussion.

3.b. In answer to “Section 22- Police Record – In the last seven (7) years,” Applicant answered “No,” and failed to disclose any of her six convictions that occurred from 2016~2020. (Item 3 at page 33.) I find this to be a willful falsification.

### **Policies**

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline G: Alcohol Consumption**

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

The guideline at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. One condition may apply:

(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 had three alcohol-related incidents between 2016 and 2018.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. One conditions may apply:

(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's last alcohol-related conviction was more than four years ago. Alcohol Consumption is not the gravamen of Applicant's case; and as such, it is found for Applicant.

### **Guideline J: Criminal Conduct**

The security concern relating to the guideline 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 at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. One condition may apply, as discussed below:

(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.

Applicant has six convictions from 2016~2020. This evidence raises security concerns under the above disqualifying condition, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 32 contains two conditions that could mitigate criminal conduct security concerns:

(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.

Sufficient time has not passed since Applicant's most recent conviction, given the fact that she has five previous convictions. She was still on probation until six months after the issuance of the SOR, and said probation only ended recently, about the time of the issuance of the FORM. Criminal conduct is found against Applicant.

## Guideline E: Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's deliberate falsification of his SCAs, the following disqualifying condition applies under AG ¶ 16:

(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied intentionally falsifying her SCAs. When a falsification allegation is controverted, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.<sup>1</sup>

In this instance, it is apparent from Applicant's comments that she was aware of her criminal record. She should have disclosed these facts to the Government. I find

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<sup>1</sup> See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

substantial evidence of an intent by Applicant to omit, conceal, or falsify facts from and on her SCAs. Therefore, AG ¶ 16(a) is established.

The personal conduct security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors in AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(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.

After considering the mitigating conditions outlined above, none of them apply. Applicant did not make prompt or good-faith efforts to correct her falsifications or concealments. While she discussed the falsifications with an investigator, she failed to establish that her disclosure was prompt or in good-faith. She provided no information that indicates she was ill-advised in completing her SCAs. (Item 5 at page 1.) Falsifying information is a serious offense, and Applicant has shown that similar lapses in judgment are likely to occur. Further, she failed to take responsibility for her actions. She has not provided sufficient information in this record to demonstrate that she has met her burden of proof for her personal conduct. Personal Conduct is found against Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable 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. Overall, 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 has failed to mitigate the security concerns arising from her Criminal Conduct, and Personal Conduct.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraphs 1.a~1.c:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a~2d:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a. and 3.b:	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 interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

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Richard A. Cefola  
Administrative Judge