



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



In the matter of:)	
)	
)	ISCR Case No. 21-00258
)	
Applicant for Security Clearance)	

Appearances

For Government:
Dan O'Reilly, Esq., Department Counsel

For Applicant:
Pro se

January 19, 2023

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on October 12, 2020. (Item 3.) On December 15, 2021, the Department of Defense Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct). (Item 1.) 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 within the Department of Defense (DoD) after June 8, 2017.

Applicant answered the SOR in writing (Answer) on January 26, 2022, and requested her case be decided on the written record in lieu of a hearing. On June 22, 2022, Department Counsel submitted the Government's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 7, was provided to Applicant, who received the file on July 7, 2022. (Item 2 at 3.)

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant elected not to file objections to the FORM or to submit any additional information. Accordingly, Items 3 through 7 are admitted into the record without objection. Items 1 and 2, the SOR and the Answer, respectively, are already part of the record. The case was assigned to me on October 3, 2022. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 33 years old, unmarried, and has four children under the age of 13. She received a high school diploma and attended college classes for five months in 2005. Applicant has been employed by defense contractors as a security guard since 2008. She first received a security clearance in 2006. She seeks to retain her national security eligibility and a security clearance in connection with her employment. (Item 3 at Sections 1, 12, 13A, 17, and 18; Item 4 at 1.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges that Applicant is ineligible for clearance because she is financially overextended with delinquent debts and therefore is potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. In her Answer, Applicant admitted all but one of the SOR allegations under this guideline. The existence and amounts of these debts are also supported by the credit reports in the record dated November 17, 2020, and June 17, 2022. (Items 1, 2, 6, and 7.)

The status of the matters set forth in this paragraph of the SOR is as follows:

1.a. Multiple Federal student loan accounts placed for collection in the total amount of approximately \$23,476. Item 6, Applicant's June 2022 credit report, details 13 student loan accounts opened by Applicant during the 2011 to 2015 period. Applicant defaulted on repaying the loans in or about April or May 2018, based upon the dates of last activity reported in her June 2022 credit report in the record (Item 6). Her e-QIP reflects no college classes during the 2011 to 2015 period. In her background interview, Appellant reported that she defaulted because she was between jobs at the time. The e-QIP does not reflect any unemployment in 2019 or thereafter. In her Answer, Applicant stated that her loans are on "pause" pursuant to Federal policy, and she intends to set up a payment plan when the pause expires. She provided no information to establish that she has rehabilitated her Federal student loans in collection, which were in default prior to the beginning of the

Federal “pause” policy first instituted at the beginning of the COVID pandemic in March 2020. She has also provided no evidence that her student loans are eligible for the benefit of the Federal “pause” program or that she has the financial ability to pay her loans under a future payment plan. These debts are not resolved. (Item 2 at 5; Item 6 at 4-8; Item 7 at 2-7.)

1.b. Debt placed for collection in 2017 in the approximate amount of \$2,062. In her Answer, Applicant admitted this debt and wrote that she was willing to set up a payment plan. She has not asserted that she has set up a plan or made any payments to the creditor. This debt is not resolved. (Item 2 at 6; Item 7 at 4, 6.)

1.c. Debt charged off in 2017 in the approximate amount of \$1,653. Applicant opened this credit-card account with Bank A in September 2017 and defaulted on her payments in December 2017. In her Answer, Applicant admitted this debt and wrote that she was willing to set up a payment plan. She has not asserted that she has set up a plan or made any payments to the creditor. This debt is not resolved. (Item 2 at 6; Item 6 at 16; Item 7 at 5.)

1.d. Debt placed for collection in 2018 in the approximate amount of \$894. In her Answer, Applicant admitted this debt and wrote that she was willing to set up a payment plan. She has not asserted that she has set up a plan or made any payments to the creditor. This debt is not resolved. (Item 2 at 6; Item 7 at 7.)

1.e. Debt placed for collection in the approximate amount of \$433. In her Answer, Applicant denied this debt and wrote that she had paid it. She provided no evidence of her payment and did not assert when she paid the debt. The debt, however, does not appear in the Government’s most recent credit report in the record (Item 6). This debt is resolved. (Item 2 at 6; Item 7 at 8.)

1.f. Debt placed for collection in 2020 in the approximate amount of \$412. In her Answer, Applicant admitted this debt and wrote that she was willing to set up a payment plan. She has not asserted that she has set up a plan or made any payments to the creditor. This debt is not resolved. (Item 2 at 6; Item 6 at 9; Item 7 at 8.)

1.g. Debt placed for collection in the approximate amount of \$348. In her Answer, Applicant admitted this debt and wrote that she was willing to set up a payment plan. She has not asserted that she has set up a plan or made any payments to the creditor. This debt is not resolved. (Item 2 at 6; Item 7 at 8.)

1.h. Debt placed for collection in 2016 in the approximate amount of \$256. In her Answer, Applicant admitted this debt and wrote that she was willing to set up a payment plan. She has not asserted that she has set up a plan or made any payments to the creditor. This debt is not resolved. (Item 2 at 6; Item 6 at 9; Item 7 at 9.)

1.i. Debt charged off in 2017 in the approximate amount of \$16,238. Applicant opened this vehicle loan account with Bank A in February 2016 and defaulted on her payments in March 2017. The account was subsequently charged off. In her Answer Applicant admitted this debt and wrote that the creditor repossessed the vehicle. She believed that the balance after the resale of the vehicle should be lower than the alleged amount of the debt. Nevertheless, she wrote that she was willing to set up a payment plan to repay the debt. She has not asserted that she has set up a plan or made any payments to the creditor. The Government's credit reports are somewhat inconsistent on the status of the debt. The November 2020 report (Item 7) states that the outstanding balance is \$16,238, but it also states that the debt was settled for less than the full balance of the debt. It further reflects that the charged-off debt was paid. The more recent credit report (Item 6) states that the balance is \$0 and that the "Account Was Paid For Less Than Full Balance." Based upon the information in the credit reports, this debt is resolved. (Item 2 at 6; Item 6 at 15; GE 7 at 9.)

Paragraph 2 (Guideline J, Criminal Conduct)

The Government alleges that Applicant is ineligible for clearance because of her criminal conduct, which raises questions about her judgment, reliability, and trustworthiness; and about her ability and willingness to comply with laws, rules, and regulations. In her Answer, Applicant admitted her recent arrest but noted that the charge against her was dropped. (Item 2 at 3, 6.)

The status of the matters set forth in this paragraph of the SOR is as follows:

2.a. February 2021 arrest on an arrest warrant for Felony Embezzlement issued in October 2016. Applicant worked as a cashier at a retail chain in October 2016. Her employer accused her of stealing about \$340 from her cash register and filed charges with the police. The theft occurred over a period of about eight days. After the last incident Applicant failed to appear for her scheduled work shifts and failed to contact anyone at her employer. The local police report in the record, which is included as part of Item 5, identifies in detail the complainant, who was a loss-prevention employee of the store where Applicant worked, and the three dates and amounts of the cash shortages discovered in Applicant's registers. The reporting police officer commented in his report that he obtained a felony warrant for Applicant's arrest from a judge and filed the warrant "at the warrant desk." Applicant was arrested on the warrant in February 2021 during a routine check due to her vehicle being improperly parked. The police department's Arrest Report appears in the record. The only information in the record regarding the disposition of the charge is Applicant's statement in her Answer that the charge was "dropped." The arrest occurred after she submitted her e-QIP and her background investigation. The arrest was reported in a DoD Continuous Evaluation Program report, dated June 17, 2021. (Item 2 at 3, 6; Item 5 at 3-7.)

Paragraph 3 (Guideline E, Personal Conduct)

The Government alleges that Applicant is ineligible for clearance because she provided false information in her October 12, 2020 e-QIP, which raises questions about judgment, honesty, reliability, and trustworthiness. Applicant omitted requested information in her response to questions about her financial history. In her Answer Applicant wrote that she believed that her debts were outside of the seven-year period covered by the e-QIP questions.

3.a. Falsification in the e-QIP regarding debts. The relevant e-QIP question asked Applicant to disclose bills or debts turned over to collection agencies and accounts and credit cards suspended, charged off, or cancelled for failure to pay as agreed. Both questions were limited to such actions taken in the last seven years, *i.e.*, during the period October 2013 to October 2020. Applicant responded “No” to both questions, thereby failing to disclose the debts and accounts listed in SOR subparagraphs 1.a through 1.i. All of the defaulted obligations were turned over to a collection agency or charged off for failure to pay as agreed during the period 2016 to 2020. Applicant should have listed all of the debts and accounts alleged in the SOR.

In her Answer, Applicant wrote that she failed to list her debts because she believed that they arose more than seven years ago. Her excuse for failing to list her debts is not credible. None of the debts became delinquent more than four years prior to the date she signed the e-QIP and certified that her answers were truthful and correct. The deliberateness of her non-disclosure is also evidenced by her failure to disclose her defaults on her Federal student loans within a year or two prior to the date of her e-QIP. When given the opportunity to voluntarily disclose her defaults on her student loans during her November 2020 background interview, she failed to do so. Applicant even went so far as to not disclose in her e-QIP her post-high school education, which was paid by these 13 student loans accounts opened by Applicant between 2011 and 2015. Her non-disclosure of these college courses is evidence that she was actively seeking to conceal her defaults on her student loans. (GE 3 at 2.)

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, “Any 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, “The 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 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 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, “Any 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

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

As of the date the SOR was issued, Applicant owed a total of approximately \$46,000 on 13 past-due Federal student loans and 8 other delinquent debts. Applicant's two credit reports and her admissions in the Answer establish these facts. Accordingly, the foregoing potentially disqualifying conditions are applicable, and the burden of proof shifts to Applicant to mitigate the security concerns raised by her conduct.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (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, or 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 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

None of the above mitigating conditions has been established. The debts are recent and cast doubt on Applicant's reliability, trustworthiness, and judgment. She has not provided any evidence of being unemployed or any other reason for her financial defaults that may have been beyond her control. She has not received counseling and has not produced evidence that her financial problems are under control. With respect to her Federal student loans, the Federal Government has extended the moratorium on student loan payments. Applicant has not, however, provided evidence that she has taken

steps to rehabilitate her loans. Her delinquencies on her student loans date back to April 2018. To the extent that the Federal “pause” policy, which was originally instituted in March 2020, may apply to student loans that were delinquent prior to the institution of that policy and have not been rehabilitated, the policy does not excuse her past inactions in the context of security clearance eligibility. ISCR Case No. 20-01527 at 2 (App. Bd. Jun. 7, 2021). Lastly, she has not made a good-faith effort to repay overdue creditors. Applicant has not met her burden to establish mitigation with evidence of steps taken to resolve her delinquent debts and to show her current financial responsibility. Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline J, Criminal Conduct)

The security concern under this guideline is set out in AG ¶ 30 as follows:

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.

AG ¶ 31 describes a condition that could raise security concerns and may be disqualifying in this case:

(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.

Applicant has not explicitly denied or disputed that she committed the crime of embezzlement. She wrote in her Answer only that the charges were dropped. To the extent that this statement can be interpreted as a dispute of the charge against her, the Government is obligated to establish the underlying facts regarding Applicant’s criminal conduct. The applicable standard of proof for the Government’s evidence is “substantial evidence.” The Appeal Board has defined the term “substantial evidence” as “more than a scintilla but less than a preponderance of the evidence.” ISCR Case No. 18-00496 at 3 (App. Bd. Nov. 8, 2019). This standard is less demanding than the probable cause standard applicable in criminal cases. *Id.*

The record evidence supports a conclusion under the “substantial evidence” standard that Applicant engaged in the criminal behavior alleged in the SOR because the evidence of embezzlement was found to be credible by both the police officer who filed the charges and by the judge who issued a warrant for Applicant’s arrest. Accordingly, the record evidence establishes the above potentially disqualifying condition.

This evidence shifts the burden to Applicant to establish mitigation. AG ¶ 32 sets forth four mitigating conditions under Guideline J. The following three mitigating conditions have possible application to the facts in this case:

(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;

(c) no reliable evidence to support that the individual committed the offense;
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.

None of the above mitigating conditions have been fully established. The criminal conduct occurred in 2016 when Applicant began to experience financial difficulties. Some time has passed since then, but the record contains no evidence that such criminal conduct is unlikely to recur. Moreover, the criminal conduct casts doubt on Applicant's reliability, trustworthiness, and judgment. The fact that the prosecutor in Applicant's case may have dropped the charge against her is not reliable evidence that she did not commit the crime. Prosecutors take such action for any number of reasons unrelated to whether the defendant committed the criminal conduct. See, e.g., CAC Case No. 16-01524 at 3 (App. Bd. Apr. 19, 2018). Lastly, Applicant provided no evidence of successful rehabilitation.

Paragraph 3 (Guideline E, Personal Conduct)

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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.

AG ¶ 16 describes one condition that could raise security concerns and may be disqualifying in this case:

(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.

At the time she prepared the e-QIP, Applicant had delinquent debts. She did not report these debts on her e-QIP; but instead denied their existence by answering, "No," to the relevant questions. Applicant admitted in her Answer that she was aware of her delinquent debts. She did not credibly explain why she believed they occurred outside the scope of the queries, particularly as they remained delinquent at the time she completed her e-QIP. The record evidence supports the conclusion that Applicant's denials and omissions of her debts were deliberate. The above disqualifying condition has application to this case.

The guideline includes two conditions in AG ¶ 17 that could mitigate the security concerns arising from Applicant's deliberate falsification:

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

Neither of the above mitigating conditions apply to the facts of this case. Applicant failed to make a prompt good-faith effort to correct the denials and omissions before being confronted with the facts. Her material omissions were significant and her effort to conceal from the Government that she has many delinquent debts cannot be characterized as a minor offense that is unlikely to recur. Applicant's falsifications cast doubt on her reliability, trustworthiness, and judgment. Paragraph 3 is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security 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 pertinent facts and circumstances surrounding this case. Applicant has not mitigated the concerns regarding her financial considerations, criminal conduct, and personal conduct. She has not minimized the potential for pressure, coercion, or duress. Moreover, she has not shown that there is little likelihood of recurrence of her behavior. Overall, the record evidence creates questions and doubts as to Applicant's present suitability for national security eligibility and a security clearance.

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 F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f through 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.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 interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge