



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



In the matter of: )  
)  
) ISCR Case No. 21-00332  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

07/28/2023

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations or personal conduct security concerns. Criminal conduct concerns were mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 23, 2021, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF), now known as the Consolidated Adjudication Services (CAS), issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, Guideline J, criminal conduct, and Guideline E, personal conduct. The DCSA CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on August 2, 2022, and 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 on August 24, 2022. The evidence included in the FORM is identified as Items 2-6 (Item 1 includes pleadings and transmittal information). The FORM was received by Applicant on September 13, 2022. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She did not file objections to the Government's evidence, or submit any exhibits. Items 2-6 are admitted into evidence. The case was assigned to me on July 24, 2023.

### **Findings of Fact**

Applicant admitted all the SOR allegations in her answer to the SOR. Her admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 40 years old. She has worked for her current government-contractor-employer since 2020. She has a full employment history dating back to 2007. She holds a bachelor's degree. She has never married and has no children. (Item 2)

Under Guideline F, the SOR alleged Applicant failed to file her 2015-2019 federal income tax returns, and accrued 18 delinquent debts totaling approximately \$76,000. The debts are comprised of collections and charged-off accounts (student loans, credit card, and consumer debt). Some of the delinquency dates relate back to 2009. The unfiled tax returns are established by her security clearance application (SCA) admissions and her SOR admissions. The debts are established by her admissions in her answer, security clearance application (SCA), and during her background interview, and credit reports from October 2020 and August 2022. (SOR ¶¶ 1.a-1.s) (Items 2-3, 5-6)

Under Guideline J, the SOR alleged that Applicant was arrested in February 2016 for driving with a suspended license. It also alleged that she was arrested in July 2010 and charged with one count of theft and one count of failure to appear. It also alleged that she was arrested in June 2003 and charged with one count of theft and was placed on probation for 24 months. Her admissions in her SOR response, with no further explanations, support the allegations. (SOR ¶¶ 2.a-2.c) (Item 1-Answer to SOR)

Under Guideline E, the SOR alleged that Applicant deliberately falsified material facts in her September 2020 SCA when she failed to disclose her February 2016 arrest, as described in SOR ¶ 2.a, in Section 22 of the SCA. It also alleged that Applicant falsified material facts in her September 2020 SCA when she failed to list her July 2010 arrest, as described in SOR ¶ 2.b, in Section 22 of the SCA. However, that arrest was over seven years old, and did not need to be listed on her SCA. As to this part of the allegation, I find in favor of Applicant. (SOR ¶ 3.a)

## **Financial Considerations**

Applicant admitted in her SCA that she failed to file her 2015-2019 federal income tax returns. In her October 2020 background interview with an investigator, she affirmed not filing her federal income tax returns for those years. Her reason for not filing was that she started having financial problems because of her spotty employment. In order to continue paying her immediate bills, such as rent, she stopped filing her federal income tax returns. She also stated that now that she had her current job, she would contact an accountant by the end of the year (2020) and file her returns. In her SOR answer, after admitting not filing those tax returns, she stated that she was “working on having 2015, 2016, 2017, 2018, and 2019 filed by September 2022.” She failed to produce any evidence that those filings were made. (Items 1-3)

Appellant listed some of the delinquent debts in her 2020 SCA, but not all. During her background interview, she admitted all her SOR debts when the investigator confronted her with them, including her 14 delinquent student loans. Regarding her consumer and credit-card debts, she asserted that now that she had a good job, she would look at her credit reports, contact the creditors, and pay the bills. There is no evidence that she took any of those actions. She claimed she was unaware that her student loans were delinquent. She asserted she would contact her financial aid office and take care of these loans. There is no evidence that she took that action. She claimed that her financial situation is a work in progress, but she was in a better state than she had been in a long time. She did not produce any evidence of debt payment, payment plans reached, contact with any of the creditors, or any other actions she took to resolve these debts. (Items 1-3, 5-6)

## **Criminal Conduct**

In her SOR answer, Applicant admitted to the alleged three criminal arrests in 2016, 2010, and 2003. She did not provide any explanation for the arrests in her SCA, her background interview, or her SOR answer. The source of the arrest information comes from an FBI identification record, which lists the arrests. There is no evidence of any criminal arrests after 2016. (Items 1, 4)

## **Personal Conduct**

In her SOR answer, Applicant admitted deliberately omitting her 2016 arrest on her 2020 SCA as she was required to list in response to Section 22. She failed to provide any explanation for this omission during her background interview or her SOR answer. (Items 1-2)

## **Policies**

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 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(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 ¶ 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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain 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 about 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**

AG ¶18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶19 and the following potentially apply:

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

There is no evidence showing that Applicant filed her 2015-2019 federal income tax returns. All of her delinquent debts remain unpaid and unresolved. She has a history of unpaid debts. I find the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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

(g) 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 has a history of financial difficulties. She failed to take action to file her delinquent federal income tax returns. The SOR debts are ongoing and therefore recent. All of her debts are unresolved. She did not provide sufficient evidence to show that her financial problems are unlikely to recur. AG ¶ 20(a) does not apply. While she claimed low paying and sporadic employment as the cause of her financial distress, which is a condition beyond her control, she failed to present evidence that she acted responsibly in an effort to resolve them. I find AG ¶ 20(b) does not apply. No information was provided that she sought financial counseling, has made a good-faith effort to resolve her delinquent debts, or has made arrangements to file her relevant tax returns. AG ¶¶ 20(c), 20(d) and 20(g) do not apply.

#### **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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case. The following are potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant was arrested and charged for various criminal offenses in 2016, 2010, and 2003. The above disqualifying condition applies.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and considered the following relevant:

(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.

Applicant's last arrest occurred in 2016. There is no evidence in the record that any additional arrests have occurred since that time. AG ¶¶ 32(a) applies. The criminal conduct security concerns are mitigated.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the personal conduct security concern:

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 conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(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's bare admission in her SOR answer to deliberately providing false information on her September 2020 SCA by failing to list her 2016 arrest satisfies this disqualifying condition. AG ¶ 16(a) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with 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; 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 failed to address any explanation for not listing her 2016 arrest on her SCA. Since an applicant has the burden to establish mitigating conditions, Applicant did not meet that burden here. AG ¶ 17(a) does not apply.

Deliberately providing false information on an SCA is not a minor offense and it occurred as recently as 2020. Providing deliberate false information on her SCA casts doubt on her reliability, trustworthiness, and judgment. AG ¶ 17(c) does not apply.

There is insufficient evidence to indicate that such behavior is unlikely to recur. AG ¶ 17(d) does not 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has not established a track record of financial stability, and deliberately provided false information on her 2020 SCA.

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 failed to mitigate the security concerns arising under Guideline F, financial considerations, and Guideline E, personal conduct. She mitigated the criminal conduct concerns under Guideline J.



## 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.s:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a - 2.c:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant [Except the language in SOR ¶ 3.a that refers to SOR ¶ 2.b.]

## 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge