



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



In the matter of:)	
)	
)	ISCR Case No. 22-01539
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole Smith, Esq., Department Counsel
For Applicant: *Pro se*

11/09/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On October 25, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The action was taken 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 adjudicative guidelines (AG) effective on June 8, 2017.

On November 21, 2022, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on September 15, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

September 27, 2023, scheduling the hearing by Microsoft Teams for October 19, 2023. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 5. Applicant testified and offered Applicant Exhibits (AE) A through J. All exhibits were admitted into evidence without objection. DOHA received the hearing transcript on October 31, 2023.

Findings of Fact

Applicant admitted all of the allegations in the SOR. Her admissions have been incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. She earned a bachelor's degree in 2002. She is not married and has no children. She was in a cohabitational relationship from 2004 until approximately 2019. She has been employed by her present employer since November 2021. When she began this employment, she earned \$110,000 per year, and it increased incrementally, and she now earns \$115,000 per year as of July 2023. (Tr. 23-25, 30)

Applicant completed a National Security Questionnaire (SF 86) in June 2021. She reported a period of unemployment from November 2019 to March 2020. She had been employed from May 2019 to November 2019 and reported on her SF 86: "Left by mutual agreement following notice of unsatisfactory performance. I was not happy about traveling for my position." She testified that she voluntarily left this job because she did not want to get a corporate credit card, which was required for travel. She did not have another job lined up before she left this employment. She secured a job in March 2020, with Company A and earning about \$98,000. (Tr. 23-30; GE 1, 2)

In December 2020, Applicant left the employment of Company A for a job that paid a higher salary. She began employment with Company B. In August 2021, she was terminated from her job at Company B for breach of contract due to various infractions. She testified that she was aware of the termination but disputed some of the reasons. She admitted to receiving verbal reprimands. She further testified that she does not dispute that she was terminated from her job at Company B, but she said she was also told she could apply for another job within the company. She testified that she was unemployed for a few weeks and then started a job with another company and worked there from September 2021 through October 2021, prior to starting her present job in November 2021. (Tr. 23-30, 57, 60-64; GE 1, 2)

Applicant was interviewed by a government investigator in September 2021. She disclosed to the investigator that she no longer worked at Company B and had left the job for better opportunities, pay and benefits. She did not disclose she was terminated from the job. (GE 2)

In January 2022, Applicant was interviewed again by a government investigator. She was presented with an opportunity to discuss and confirm her employment history. She confirmed that in the last seven years she had not been fired from a job, quit a job

after being told she would be fired, left a job by mutual agreement following allegations of misconduct or following notice of unsatisfactory performance, received a written warning, been reprimanded, suspended, or disciplined for misconduct in the workplace at any of her employments. She did not disclose her termination from Company B. She was confronted by the investigator with her August 2021 termination and she explained that she did not report this information when interviewed in September 2021 because she was embarrassed. She previously said she left Company B on good terms. She was confronted by the investigator with the various infractions, and she admitted most of them at that time. During her hearing, she clarified, explained, or disputed some of the infractions. She said she is embarrassed about her behavior during this time. She admitted she was untruthful. (Tr. 30, 37, 39-40, 64-72; GE 2)

Applicant testified that during this time, she was going through relationship problems that began in 2018, and she was struggling emotionally. She was working remotely due to the pandemic, and she was having difficulty adjusting. She admitted she did not handle herself very well, and it impacted her work. She testified that she was aware of her duty to disclose that she was terminated from employment with Company B when she was asked about it. She deliberately falsified material facts during her interviews with a government investigator. (Tr. 30, 37, 39, 64-72; GE 2)

Applicant testified that her personal issues with her partner impacted her life and her work. At the time, she was trying to save her relationship and put her life back together. She quit one job and was not performing well at another. When she quit her job, her only income was unemployment benefits, which were insufficient for her to pay her bills. She testified that her debts became delinquent in approximately November 2019, when she stopped making payments. She and her partner separated around 2019. She did not reach out to any of her creditors when she stopped paying her accounts in 2019. (Tr. 30-31, 37, 42-43)

Applicant testified that she pays her ex-partner's monthly car payment of approximately \$416 and many of her living expenses. Her ex-partner worked sporadically and occasionally contributed to the household expenses throughout their relationship which began about 2004, but Applicant was primarily responsible for the household expenses. Applicant purchased a house in 2005 and was solely responsible for paying the mortgage. In August 2021, she sold the house so she could give her ex-partner the profit of approximately \$42,000. When questioned why she gave the entire profit to her ex-partner when she had delinquent debts, she said it was because she had made a verbal agreement with her to give her the money because she had been unfaithful to her. (Tr. 37, 49-54, 75-85)

During the pandemic, Applicant's partner drove her car to a distant state. Applicant went to pick her up and they left the vehicle there. They decided not to retrieve it for about 11 months because at the time there were certain border restrictions due to the pandemic. Applicant rented a car for her ex-partner from about February 2020 until December 2020 when they retrieved the other vehicle. She estimated the monthly cost of the vehicle was approximately \$600-\$700. This impacted her ability to pay her other debts. She was

asked if she started making payments on her delinquent debts when she stopped paying for the rental car and when her salary increased. She said no because other things were going on in her personal life. She and her partner were trying to figure out how to separate, which they are still trying to do. (Tr. 37. 44-49)

Applicant lives in a hotel with her dog. Her ex-partner also lives in the same hotel. Applicant pays for both hotel rooms, and they have lived there for about two years. She testified that she pays about \$3,200 a month for the two rooms. When asked why she did not rent an apartment, she explained it was unaffordable with the extra deposits and startup costs of getting an apartment. She stated that despite the fact she and her ex-partner have been separated for an extended period, she continues to financially support her. She said her ex-partner has some medical issues. She is not on disability. Her ex-partner shares the expenses for the dog. (Tr. 37, 49-57)

Applicant testified that she has no savings or money in her accounts. After paying all her living expenses and some of her ex-partners, she has about \$100 left. She does not have investments. She said she withdrew the money she had in an individual retirement account years ago. She has not participated in financial counseling in the past ten years but had some before then. (Tr. 54-56)

The SOR alleged six delinquent debts totaling approximately \$24,207. Applicant settled the credit card debt in SOR ¶ 1.e (\$2,714) in May 2023 for \$1,085, after receiving the SOR. She provided documentary proof of the settlement. (Tr. 31-33; GE 3, 4, 5; AE A).

In May 2023, Applicant contacted the creditor for the debt in SOR ¶ 1.d (\$8,927) and made a payment arrangement to make monthly payments of \$483 to settle the debt for \$5,800. She has made the required payments to date. (Tr. 31, 35-36; GE 3, 4, 5; AE H)

Applicant has not contacted the creditors or resolved the debts alleged in SOR ¶¶ 1.a (\$2,112); 1.b (\$8,978); 1.c (\$1,056); and 1.f (\$2,714). She admitted that she was irresponsible when she quit her job in 2019 without first having a plan or job in place. These debts have been delinquent since late 2019. She stated that she still has two more payments on her partner's car to pay and that will free up money, and then she will be able to begin to address her remaining delinquent debts. (Tr. 36-37; GE 2, 3, 4, 5)

Applicant testified that she failed to have sufficient tax withholdings taken during tax year 2021 and ended up owing about \$3,200 in taxes to the IRS. After completion of her tax returns and becoming aware of her debt, she contacted the IRS and entered into an installment agreement to pay \$85 a month for three years. She is current on her payments. She owed taxes for 2022 (\$1,600) and paid them. These payments have impacted her ability to make payments towards her delinquent debts. (Tr. 33-35, 75; AE C, D, E)

Applicant provided her performance evaluations and awards she has received. She explained she is now back to being a focused and dedicated employee and her work issues are behind her. She is remorseful for being terminated from her job and said her personal life was impacting her at that time. She is working hard at her job that she loves, and she is sought after for her expertise. She feels she is climbing out of a difficult period in her life, and she does not want to repeat it. She is trying to support her partner. She wants to pay her debts and has chosen as her top priority to pay the IRS before paying other debts. (Tr. 60-70, 74; AE F, G, I, J)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the 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 E: Personal Conduct

AG ¶ 15 expresses the security concern 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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

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

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's persona, professional, or community standing . . .

The evidence supports that Applicant was terminated from her employment in August 2021 due to breach of contract and violations and infractions of various company policies. She admitted some of the infractions and disputed others. She admitted she received verbal reprimands from her supervisor.

The evidence supports that Applicant deliberately falsified material facts during her interview with a government investigator in September 2021 by stating she left her

employment with Company B in August 2021 for a better opportunity, on good terms, and without any issues. This was not true as she had been terminated as explained in the above paragraph. She was deliberately untruthful.

The evidence supports that Applicant falsified material facts during her interview with a government investigator in January 2022 by confirming that in the last seven years she had not been fired from a job, quit after being told she would be fired, left by mutual agreement following allegations of misconduct or notice of unsatisfactory performance, received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace. She had in fact been terminated from her employment with Company B as explained in the above paragraph. The above disqualifying conditions apply.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

(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.

Applicant did not disclose her termination from Company B during her September 2021 interview. Later in January 2022, she was interviewed a second time and was asked if in the last seven years if she had been terminated from a job, and she denied she had been. After she was confronted with the information by the investigator, she disclosed the termination and circumstances. She said she was embarrassed. Her deliberate falsifications are not minor, and cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 17(a) and 17(c) do not apply.

Although Applicant's infractions and violations of company policy culminated in her termination, they were mostly minor. I considered that she was going through personal problems at the time and was having difficulty adjusting to working remotely due to the pandemic. I find AG ¶ 17(c) applies to SOR ¶ 2.a.

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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant began accumulating delinquent debts when she quit her job in 2019. She did not have another job lined up when she quit and was unable to pay her debts. Applicant made choices about her finances. She chose to give the profits of the sale of her house to her ex-partner and live in a hotel for two years, and not address any of her delinquent debts until after receiving the SOR. 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; and

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

Applicant's financial problems were the result of her quitting her job in 2019 and then being unemployed and unable to pay her bills. Her financial problems were exacerbated by the choices she made in how she spent her money. She sold her house and had a \$42,000 profit that she gave to her ex-partner. She chooses to live in a hotel because she said she cannot afford the deposits for a rental unit. Although she and her ex-partner are no longer together, Applicant pays most of her expenses. These are not conditions that are beyond Applicant's control. I find AG ¶ 20(b) does not apply. She has not acted responsibly under the circumstances.

Applicant has resolved or is resolving the delinquent debts in SOR ¶¶ 1.d and 1.e. AG ¶ 20(d) applies to these debts. She did not begin to address these debts until after she received the SOR. Waiting until a security clearance is in jeopardy before resolving debts may show an applicant may be lacking in judgment expected of those having access to classified information. ISCR Case No. 16-01211 at 4 (App. Bd. May 30, 2018). She has not addressed her other delinquent debts because she is paying a tax liability and does not currently have the resources. She has not had financial counseling in over ten years. AG ¶ 20(a) does not apply. AG ¶ 20(c) has minimal application as there are not clear indications that her financial problems are under control. Despite some mitigation, it is insufficient to mitigate the financial conditions security concerns.

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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

The government must be confident that those holding security clearances comply with rules and regulations, even when they are inconvenient, tedious, or when no one is watching. Being able to rely on those with security clearances to use good judgment and be honest is the cornerstone of the process. Applicant also has an unreliable financial track record. She has not met her burden of persuasion. The record evidence leaves me with questions and doubts as to her eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline E, personal conduct, and Guideline F, financial considerations.

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.d-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs: 2.b-2.c:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge