



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



In the matter of:)	
)	
)	ISCR Case No. 23-00612
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

12/01/2023

Decision

PRICE, Eric C., Administrative Judge:

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

Statement of the Case

On May 2, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, J and E. (Item 1 at 1-2) The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

On June 5, 2023, Applicant answered the SOR, and elected to have her case decided on the written record in lieu of a hearing. (Item 1 at 3-5) Department Counsel submitted the Government’s written file of relevant material (FORM) dated August 9, 2023, including documents identified as Items 1 through 5. Applicant received the FORM on August 15, 2023. She was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted an undated response to the FORM that is marked as Applicant Exhibit (AE) A. Since there were no objections to the proffered exhibits, Items 1 through 5 and AE A are admitted into evidence. The case was assigned to me on November 15, 2023.

Findings of Fact

Applicant is 51 years old. She earned an associate degree in 2006 and a bachelor's degree in 2010. She has been married since March 2000 and has two children, ages 22 and 18. (Item 2)

Applicant has been employed by a federal contractor as a financial analyst since July 2022. From September 2017 to December 2021, she was employed by the Department of the Navy as a hardware acquisition lead. She was suspended without pay from that position from December 2021 to March 2022 and resigned in March 2022. She was unemployed until July 2022. She was previously employed by government contractors from May 2005 to September 2017, with a period of unemployment from March to August 2014. (Items 2-3)

Financial Considerations, Criminal Conduct, and Personal Conduct

Under Guideline F, the SOR alleges Applicant fraudulently withdrew \$9,724 from the bank account of a youth activities club between 2017 to 2019 (SOR ¶ 1.a), and that, in 2017, she began to gamble to obtain funds to pay back the money she had taken. (SOR ¶ 1.b) Under Guideline J, the SOR cross-alleges the conduct in SOR ¶ 1.a (SOR ¶ 2.a), and that in about 2021 she was charged with two counts of Felony Theft and ordered by the court to pay \$20,000 in restitution (SOR ¶ 2.b). Under Guideline E, the SOR cross-alleges the conduct in SOR ¶¶ 1 and 2 (SOR ¶ 3.a). Applicant admitted all the allegations in the SOR, with some explanations. (Item 1)

Applicant volunteered as concession coordinator and treasurer for a youth activities club from 2012 to March 2020. From 2017 to 2019, she wrongfully issued club checks totaling about \$10,000 that were made payable to herself or to others for her personal expenses, including a home mortgage, auto loan, and utilities. During this same timeframe she began to play the lottery with the hope of winning enough money to pay back the money she had stolen from the club before anyone noticed. She started by occasionally spending \$20 to \$50 on lottery tickets or playing lottery numbers and progressed to playing lottery games every other day and spending \$100 to \$200 per week on lottery tickets. (Items 1-5)

In 2019, the new club president discovered some club funds were unaccounted for. He informed board members and Applicant that about \$10,000 in club funds were unaccounted for, and that it would be investigated. In March 2020, he fired Applicant from her club positions and reported her suspected fraud to local police. In about May 2020,

she was informed by the police that she would be charged for stealing about \$10,000 and then hired an attorney (Items 3-5)

On August 23, 2021, Applicant was charged with “Theft Scheme: \$1,500 to <25K” and “Theft: \$1,500 to under \$25,000” in violation of the state criminal code, and summoned to appear in court in October 2021. (Item 4 at 2-3) Each offense was punishable by up to five years imprisonment and a \$10,000 fine. Each charge alleged that from about January 1, 2018 to December 31, 2019, Applicant stole \$9,754 from the youth club. The first charge included the additional language that her theft was “pursuant to a scheme and continuing course of conduct.” A local news outlet reported her name and case details the next day. (Items 4-5)

On September 8, 2021, Applicant sent an email to a Navy security official admitting she had made fraudulent withdrawals from the youth league bank account totaling \$9,724. She also stated that:

My family was struggling at this time and I didn't want to lose our house or our means of transportation to get to and from our employment. At the time I was struggling with a gambling addiction. Once my husband found out, I almost lost my family and everything else. He has stood beside me, and I haven't gambled in over a year and a half. As distorted as it is, my thought process at the time was, I would win enough gambling to back anything I took from the [club] account plus more. I know this doesn't sound right, but my mind was messed up at the time. I do believe these charges will be dropped or dismissed, as full restitution will be made to the league. Per my attorney, there is a possibility that the [district attorney] may say that we need to pay more to league, and we are prepared to do that if that is what it takes to make this go away. I have never been so ashamed and disappointed in myself. I have never been in any trouble before and fully intend to never be in any trouble again, ever. (Item 4 at 1)

Applicant disclosed she had been charged with stealing money from a youth organization in her August 2022 security clearance application (SCA). During a November 2022, subject interview (SI) with a government investigator, she made the following statements. She started stealing club funds because she could not pay the family's monthly expenses after her husband's commission-based income dropped from \$5,000 to \$2,000 a month. She did not tell her husband that she could not pay the family's bills because she did not want to hear from him about why they did not have enough money when their shortfall was attributable to his income reduction. She acknowledged that her gambling during this timeframe did not help their financial situation but wanted to play because of the chance to win big and to repay the stolen money. She denied stealing the funds to support her gambling or being addicted to gambling and said she did not go to gamblers anonymous. She was never late on her bills from 2017 to 2019. She stopped stealing club funds and quit playing the lottery in 2019 after her pay increased and her husband found a better paying job. Although she was then able to pay the family's monthly bills, she did not have sufficient funds to start repaying the stolen club funds. She did not

tell anyone about her misconduct, including her husband, until after she was fired as club treasurer in March 2020. (Item 2 at 33-34, Item 3 at 7-10)

Applicant said that she never went to court because the matter was settled out of court and that the settlement required her to pay \$20,000 even though she stole about \$10,000. She estimated that she paid the settlement in about July 2021 but provided no documentary evidence of a settlement agreement or restitution payment. Based upon her statement to Navy security personnel, I find that no restitution payment was made before September 8, 2021. She said she paid restitution with funds obtained through loans. She reported in her SCA and told the government investigator that the charges were dropped and had been expunged from her record. In November 2022, she told the investigator the charges had been expunged in December 2021 and that she would provide evidence. The government investigator reported receiving documents subsequently provided by Applicant including “expungement paperwork, copies of her bank statement to show proof of payment to [her friend], and [her] loan paperwork” and the investigator reported attaching those documents to the SI, but those documents were not included in the FORM or submitted by Applicant. (Item 2 at 33-34, Item 3 at 6-10, 12)

In response to the SOR, Applicant explained that it had been more than three years since she stole from the youth club and that she “was not ordered by the court to pay restitution, this was an agreement between myself and the organization.” (Item 1 at 4) Her response to the FORM included the following: She reiterated that “payment of the funds was by agreement and not court ordered as the case never went to trial [and that she] was willing to make any restitution required to make things right. As far as the gambling, I was not a gambler before the incident, and I have not gambled in almost 3 years.” She noted that she had always intended to repay the money; that she can be trusted to report negative conduct because she had reported this incident in the past and had previously reported an old bankruptcy to a prospective employer. She acknowledged exercising poor judgement and said her actions negatively affected her entire life. She said that nothing like this would ever happen again and that her trustworthiness, judgement, and reliability had not otherwise been called into question during her approximately 30 years of working for the government or as a government contractor. She stated her desire to continue supporting the government. Her responses to the SOR and FORM did not include any supporting documentary evidence. (AE A)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the 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.

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994); see also ISCR Case No. 18-00496 at 3 (App. Bd. Nov. 8, 2019) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see also AG ¶ 2(b).

Analysis

Guideline F: Financial Considerations

The security concern under this guideline 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.

This concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified or sensitive information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 lists conditions that could raise a security concern and may be disqualifying in this case including:

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust; and

(i) concealing gambling losses, family conflict, or other problems caused by gambling.

AG ¶ 19(d) is established by Applicant's admissions and record evidence. While not an "employee" of the youth charity, she served as a volunteer treasurer of the organization, and committed intentional financial breaches of trust by stealing money from the organization for her own purposes over a period of two years.

The record evidence is insufficient to establish AG ¶ 19(i). Although Applicant admitted that she spent from \$20 to \$200 a week on lottery games and stated that she was simultaneously struggling with an addiction to gambling, she later contradicted that

statement. I find the record evidence insufficient to support a conclusion she was concealing gambling losses or other problems caused by playing lottery games.

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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15.

The record supports the following findings: (1) From 2017 until December 2020 Applicant used her position of trust as club treasurer to steal about \$10,000; (2) she started playing the lottery to win money to repay those stolen funds and to conceal her theft; (3) in 2019 or early 2020 she was informed the club president was investigating missing club funds and she was removed as club treasurer in March 2020 by the club president after he determined she had stolen about \$10,000; (4) Applicant did not disclose her theft scheme to anyone until after she was fired as treasurer; (5) in about May 2020 she was informed by local police that she would be charged for stealing about \$10,000 and hired an attorney; (6) in August 2021 she was served with two felony charges for her thefts, summoned to appear in court in October 2021, and a local news outlet reported her name and case details; (7) in September 2021, she admitted stealing the youth club funds to Navy security officials and said she did so because of family financial difficulties

while noting she was also struggling with a gambling addiction (an addiction she later denied), reported her attorney had advised the charges might be dismissed if she made restitution and she stated her willingness to do so; (8) in her August 2022 SCA she reported the charges had been dismissed and expunged; (9) in November 2022 she told a government investigator that she had paid \$20,000 restitution with borrowed funds, said the charges had been expunged in about December 2021, and the investigator reported receiving and attaching copies of her “expungement paperwork, copies of her bank statement to show proof of payment to [her friend], and [her] loan paperwork” to her SI, but copies of those documents were not submitted by Applicant or Department Counsel; and (9) the record does not include any documentary evidence of Applicant’s settlement agreement with the youth club or of payment of restitution.

Collectively, Applicant’s conduct reveals an individual who repeatedly showed an unwillingness to comply with the law, rules, and regulations; who exercised poor judgment; and who engaged in criminal or deceptive behavior and abused a position of trust to steal funds.

AG ¶ 20(a) is not established. Applicant’s pattern of misconduct and concealment was recent and did not occur under circumstances making recurrence unlikely. Her almost two-year period of illegal financial practices and behavior cast doubt on her current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not established. Applicant’s spouse’s underemployment was beyond her control, but her decision to steal from an organization she served as treasurer was an action within her control. Her gambling in an effort to repay those stolen funds and her other efforts to conceal her misconduct were not responsible actions.

AG ¶¶ 20(c) and 20(d) do not appear fully applicable and are not established. Although Applicant may have paid restitution, there is no evidence that she received financial or gambling counseling. Her failure to pay any restitution until after her thefts were discovered, and then only after she was charged with two felonies and with knowledge those charges could be dismissed if she did so, does not constitute a good-faith effort to resolve the matter.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

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 a security concern and may be disqualifying that is applicable 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.

AG ¶ 31(b) is established. Applicant's admissions and the record evidence show that she was charged with two felonies under state law because of her misconduct from 2017 to 2019. (SOR ¶¶ 2.a-2.b) There is insufficient evidence to find she was court-ordered to pay restitution in the amount of \$20,000, the only part of an SOR allegation she denied. (SOR ¶ 2.b)

AG ¶ 32 provides conditions that could mitigate security concerns. Two potentially apply 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; 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.

Neither mitigating condition is fully established for the reasons set out in the above discussion of potentially applicable mitigating conditions under Guideline F.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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. The following disqualifying conditions are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, willingness to comply with rules and regulations, or other

characteristics indicating that the individual may not properly safeguard classified or sensitive information, and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, trustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources.

AG ¶¶ 16(c) and (d) are established through Applicant's admissions and record evidence. The following mitigating conditions under AG ¶ 17 are potentially applicable:

(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.

Neither mitigating condition is fully established for the reasons set out in the above discussion of Guidelines F and J.

Whole-Person Concept

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

security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guidelines F, J and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guidelines F, J and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant failed to meet her burden of persuasion. The record evidence leaves me with questions and doubts as to her eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guidelines F, J, and E.

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.b:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric C. Price
Administrative Judge