



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



In the matter of:)	
)	
)	ISCR Case No. 23-00345
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

01/18/2024

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 21, 2022. (Item 3.) On March 28, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines F (Financial Considerations) and G (Alcohol Consumption). (Item 1.) The DCSA CAS acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on May 8, 2023 (Answer), and requested a decision on the record without a hearing. On August 16, 2023, a complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 8. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government’s evidence. She received the FORM on August 24, 2023, and submitted a Response on September 13, 2023. Items 1 and 2 contain the pleadings in the case. Items 3 through 8, and Applicant’s Response are admitted into evidence. The case was assigned to me on November 15, 2023.

Findings of Fact

Applicant, age 43, is divorced and has two adult children. (Item 3 at pages 5, 19~20 and 23~24.) She attributes her current financial difficulties to her divorce. Applicant worked as many as “3 jobs at the same,” but had no medical insurance to cover unexpected emergencies. (Answer at page 1.)

Guideline F - Financial Considerations

1.a. Applicant admits that in March of 2016 she filed for the protection of a Chapter 7 bankruptcy, and that debts were discharged in July of 2016. (Item 8.)

1.b. Applicant admits that she has a past-due medical debt to Creditor B in the amount of about \$7,704. She has submitted nothing further in this regard. This allegation is found against Applicant.

1.c, 1.e, 1.f, 1.h. and 1.i. Applicant admits that she has a past-due medical debts to Creditor C in an amount totaling about \$3,885. She has submitted nothing further in this regard. These allegations are found against Applicant.

1.d. Applicant admits that she has a past-due medical debt to Creditor D in the amount of about \$705. She has submitted nothing further in this regard. This allegation is found against Applicant.

1.g. Applicant admits that she has a past-due medical debt to Creditor G in the amount of about \$648. She has submitted nothing further in this regard. This allegation is found against Applicant.

1.j. Applicant denies that she has a past-due motor vehicle debt to Creditor J in the amount of about \$8,257. She has submitted documentation from the creditor showing it is “settled in full.” (Response at pages 8~9.) This allegation is found for Applicant.

1.k. and 1.l. Applicant denies that she has past-due debts to Creditor K in an amount totaling about \$323. She has submitted documentation from the creditor showing “this account was satisfied.” (Response at pages 3~4.) These allegations are found for Applicant.

1.m. and 1.n. Applicant denies that she has past-due debts to Creditor M in an amount totaling about \$195. She has submitted documentation from the creditor showing it is “satisfied.” (Response at pages 5~6.) These allegations are found for Applicant.

1.o. Applicant denies that she has a past-due debt to Creditor O in the amount of about \$81. She has submitted documentation from the creditor showing it “has been resolved.” (Response at page 7.) This allegation is found for Applicant.

Guideline G - Alcohol Consumption

2.a. Applicant admits that in April of 2019, almost five years ago, she was arrested for Driving Under the Influence of alcohol (DUI). She also failed a field sobriety test.

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 (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 EO 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 *a/so* EO

12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F - Financial Considerations

The 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. . . .

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

Applicant had past-due debts totaling in excess of \$21,000.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts," and "(c) a history of not meeting financial obligations." The record establishes these disqualifying conditions. Further inquiry is necessary about the potential application of any mitigating conditions.

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Although Applicant can attribute many of her financial difficulties to a divorce and to medical emergencies, her financial problems are not under control. Applicant still has over \$12,000 in past-due debts she has yet to address. Applicant failed to meet her burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.i. against Applicant.

Guideline G - Alcohol Consumption

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

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

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

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder.

Applicant had a DUI arrest in April 2019, during which she failed the field sobriety test.

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

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment.

Applicant's DUI arrest occurred nearly five years ago. There is no evidence of further issues regarding her use of alcohol. Alcohol Consumption is found for Applicant.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common-sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person.

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 and G in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and G, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has failed to mitigate her Financial Considerations concern. Her substantial delinquent indebtedness is ongoing, and the resulting potential for pressure, coercion, or duress remains significant. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information. This should not dissuade Applicant from applying for a security clearance in the future, once she has addressed the Government's Financial Considerations concern.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a~1.i: Against Applicant

Subparagraphs 1.j~1.o: For Applicant

Paragraph 2, Guideline G (Alcohol Consumption): FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant's national security eligibility for access to classified information. Clearance is denied.

Richard A. Cefola
Administrative Judge