



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



In the matter of:)	
)	
)	ISCR Case No. 23-00859
)	
Applicant for Security Clearance)	

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

04/03/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline G, alcohol consumption, Guideline H, drug involvement and substance misuse, Guideline J, criminal conduct, and Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On July 17, 2023, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G, H, J and F. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on August 1, 2023, 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 (FORM), and Applicant received it on November 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. The Government's evidence is identified as Items 1 through 9. Applicant did not respond to the FORM, provide documentary evidence, or object to the Government's evidence. Items 1 through 9 are admitted in evidence. The case was assigned to me on February 27, 2024.

Findings of Fact

Applicant admitted all the SOR allegations. Her admissions are incorporated into the finding of facts. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 28 years old and a high school graduate. She has a two-year-old child. She has worked at various jobs and has been approved for a job with a federal contractor pending the approval of a security clearance. (Item 2)

In June 2022, Applicant completed a security clearance application (SCA). In July 2022, Applicant was interviewed by a government investigator. In June 2023, Applicant completed government interrogatories and affirmed her summary of enhanced interview and did not have any corrections. (Items 2, 3)

From 2016 to February 2022, Applicant used and purchased marijuana. In January 2019, she obtained a medical marijuana card from her state. Before that date she did not have the card. She stated in her interview with the government investigator that she used marijuana beginning in 2016 multiple times to relieve post-traumatic stress. She did not provide any medical records confirming a diagnosis. She purchased the marijuana on the street and estimated she smoked about 14 ounces a week. After receiving her medical marijuana card in January 2019, she purchased it at state dispensaries where it was legal under state law. She smoked it weekly. She told the investigator that she stopped using marijuana in February 2022. In response to questions in the interrogatories, she stated that she last used marijuana in January 2022, and she did not intend to use it in the future. She did not provide a response to the FORM that she received in November 2023 to update or corroborate that she is no longer a marijuana user. (Items 2, 3)

In June 2019, Applicant was arrested and charged with driving under the influence (DUI) of liquor .15% or greater, 1st offense. She pleaded nolo contendere. She was sentenced to one-year probation, twenty hours of community service, 45 days hardship license, fines and fees. She was ordered to attend DUI school and to use an ignition interlock system for nine months. From August 2019 to September 2020, Applicant attended court-ordered treatment. In her interview with a government investigator, she admitted she had consumed alcohol before her arrest. She said she satisfied the conditions of her sentence. (Items 3, 6)

In October 2019, Applicant was arrested and charged with driving with suspended/revoked/cancelled license, 1st offense. The charged was dismissed and docketed as non-trial disposition. (Items 3, 7)

In May 2022, Applicant was charged with DUI of liquor, blood alcohol concentration unknown, 2nd offense. This case was dismissed by the prosecution and docketed for non-trial disposition. She was also charged in May 2022 for Refusal to Submit to Chemical Test. She was found guilty of the charge and sentenced to 10 hours of community service, a 30-day license suspension and ordered to attend DUI treatment with random alcohol testing and use an ignition interlock system for 24 months. During her interview with a government investigator, she admitted consuming alcohol before her arrest. She admitted that she refused to take a breathalyzer and pleaded guilty to that charge. At the time of her interview, she had not started her community service and did not provide any updated information as to whether she has completed it. The date of her sentence was June 3, 2022. She is required to use the ignition interlock system until June 2024. She told the government investigator that in July 2022, she began her court-ordered alcohol treatment. No information was provided as to whether she completed the treatment, received a diagnosis, or prognosis. She also told the investigator that she does not intend to consume alcohol in the future or will only consume very little in the future. (Items 3, 4, 5)

In response to questions in the government interrogatories that asked her about past alcohol and drug use, specifically how often she consumes alcohol beverages in an average week and to describe the amount, size, and type, Applicant failed to provide any answer. She did respond to the questions about her past drug use. (Item 3)

The SOR alleges three delinquent debts that Applicant admitted to in her answer and are supported by credit reports from June 2022 and June 2023. Applicant told the government investigator that the debts in SOR ¶¶ 4.a (\$309), 4.b (\$576) and 4.c (\$926) were all resolved. She admitted she stopped paying the three debts because she did not have the money at the time because she had a new baby, but later settled or paid them in either 2019 or 2020 and has no further obligation to the creditors. Her baby was born in December 2021. She did not provide proof that she has resolved any of the debts. All three are reported as charged off and the last activity for SOR ¶ 4.a was September 2018 and the last payments for SOR ¶¶ 4.b and 4.c were in August 2018. The debts are unresolved. (Items 1, 2, 3, 8, 9)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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 G: Alcohol Consumption

AG ¶ 21 expresses the security concerns for alcohol consumption:

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.

AG ¶ 22 describes conditions that could raise security concerns and may be disqualifying. I find the following to be potentially applicable:

(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 was arrested and charged with DUI .15% or greater, 1st offense in June 2019. She pleaded nolo contendere and was sentenced to one year probation, 20 hours of community service, a 45-day hardship license, fines and fees. She was ordered to attend DUI school and use an ignition interlock system for nine months. She attended court-ordered treatment from August 2019 to September 2020. She was arrested and charged in May 2022 for DUI of liquor blood alcohol content unknown. She was charged with refusal to submit to a chemical test. The DUI was dismissed. She was found guilty of refusal to submit to a chemical test, sentenced to 10 hours of community service, a 30-day license suspension, ordered to attend DUI treatment, and use an ignition interlock system for 24 months. In July 2022, Applicant received court-ordered alcohol treatment. AG ¶¶ 22(a) applies.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating conditions under AG ¶ 23:

(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;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant had DUI arrests in 2019 and 2022. Despite participating in court-ordered alcohol treatment after her 2019 arrest and conviction, she again consumed alcohol and was arrested for DUI. She refused the breathalyzer and was ultimately found guilty of refusal to submit to a chemical test. She did not provide any evidence about a diagnosis or prognosis after completing her 2019 treatment. She did not provide evidence that she has completed the alcohol treatment ordered by the court after her 2022 conviction, which

was part of her sentence. She is subject to using an ignition interlock system until June 2024, indicating the court has concerns that she could attempt to drink and drive again. She told the government investigator during her July 2022 interview that she was going to either abstain from alcohol consumption or drink very little. She failed to respond to government interrogatories about her current alcohol consumption, which is a concern. She has not provided sufficient evidence to find there is a clear and established pattern of modified consumption or abstinence. She did not provide evidence that she is currently participating in counseling or has completed a treatment program. She continues to be under a court mandate to use an ignition interlock system. Insufficient time has passed, and her conduct did not happen under unique circumstances that is unlikely to recur. Her conduct cast doubts on her current reliability, trustworthiness, and good judgment. None of the mitigating conditions apply.

Guideline H: Drug Involvement and Substance Misuse

The security concern relating to the guideline for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) any substance misuse; and

- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia.

Applicant used and purchased marijuana from 2016 to February 2022. She said she obtained a medical marijuana card from her state in January 2019 and purchased and used it legally under her state laws. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 26 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome the problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were being used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant used marijuana from 2016 to 2019 and purchased it from the street. In January 2019, she said she obtained a medical marijuana card and purchased it from a state dispensary, where it was legal. She did not produce the medical marijuana card. Applicant told a government investigator in July 2022 that she no longer used marijuana and did not intend to do so in the future. In her June 2023 interrogatories, she said her last use was January 2022, six months before she completed her SCA. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question her about his illegal drug use, any current use, or evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). I cannot determine if future behavior is unlikely to recur or if she understands that her use of marijuana might be legal under state law but it remains illegal under federal law. The above mitigating conditions do not apply.

Guideline J: Criminal Conduct

The security concern 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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and the following is potentially applicable:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(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.

In June 2019, Applicant was arrested and charged with DUI of liquor .15% or greater, 1st offense. She pleaded nolo contendere. She was sentenced to one year probation, 20 hours of community service, a 45-day hardship license, fines and fees. She was ordered to attend DUI school and use an ignition interlock system for nine months. In October 2019, she was arrested and charged with driving with a suspended/revoked/cancelled license, 1st offense. The charge was dismissed and docketed as a non-trial court disposition. In May 2022, she was arrested for DUI-blood alcohol concentration unknown. She was charged with Refusal to Submit to Chemical Test. The DUI charge was dismissed and docketed as a non-trial disposition. She was found guilty of Refusal to Submit to Chemical Test. She was sentenced to 10 hours of community service, a 30-day license suspension, ordered to attend DUI treatment and use an ignition interlock system for 24 months, which ends in June 2024.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

(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.

Applicant was arrested in 2019 for DUI, attended treatment, and then was arrested for driving with a suspended/revoked/canceled license months later. That charge was dismissed and adjudicated in a non-trial disposition. She was then arrested for another DUI in May 2022. She refused the breathalyzer. She was convicted of that charge. She did not provide evidence that she completed the terms of her sentence. At the time of her interview, she had not completed her community service. She is required by the court to use an ignition interlock system until June 2024. Not enough time has elapsed to conclude future criminal behavior is unlikely to recur or her conduct happened under unique circumstances. Her repeated criminal conduct casts doubt on her reliability, trustworthiness, and good judgment. The above mitigating conditions do not apply.

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

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 admitted the three delinquent debts alleged in the SOR. They became delinquent in 2018. 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 admitted the three delinquent debts alleged in the SOR. They are recent, ongoing, and unresolved. She told the government investigator that she was unable to pay them at the time because she had a new baby. The debts became delinquent in August 2018, three years before her child was born. She said that she settled or paid all three debts. She did not provide any documentary proof to show a good-faith effort that the debts are resolved. They are reported as charged off on her 2022 and 2023 credit reports. Although she may not have had the means to resolve the debts in 2018, she did not provide sufficient evidence to show that the debts were caused by matters beyond her control, and she subsequently acted responsibly. She did not provide evidence that she has participated in financial counseling and her financial problems are being resolved. None of the mitigating conditions are applicable.

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 Guidelines G, H, J, and F in my whole-person analysis.

Applicant failed to meet her burden of persuasion. After weighing the disqualifying and mitigating conditions under Guidelines G, H, J and F and evaluating all the evidence

in the context of the whole person, I conclude Applicant failed to mitigate the security concerns under Guideline G, alcohol consumption, Guideline H, drug involvement and substance misuse, Guideline J, criminal 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 G:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraphs 3.a-3.b:	Against Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraphs: 4.a-4.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