



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



In the matter of:)
)
) ISCR Case No. 23-02028
)
Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

05/15/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline G, alcohol consumption. Eligibility for access to classified information is denied.

Statement of the Case

On October 2, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline G, alcohol consumption. 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 within the DOD on June 8, 2017.

Applicant answered the SOR on October 10, 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 January 31,

2024. 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 2 through 9. (Item 1 is the SOR) Applicant did not respond to the FORM. She did not object to any of the Government's evidence and did not provide any documentary evidence. Items 2 through 9 are admitted in evidence. The case was assigned to me on April 30, 2024.

Procedural Matters

Included in the FORM, the Government amended the SOR to add the following allegations:

1.i You are indebted to [creditor] on an account that has been charged off in the approximate amount of \$21,863.00. As of the date of this Statement of Reasons, the account remains delinquent.

1.j You are indebted to [creditor] on an account that has been charged off in the approximate amount of \$427.00. As of the date of this Statement of Reasons, the account remains delinquent.

The Government requested in the interest of expediting the resolution of the case that Applicant provide an answer to the amended new allegations in her response to the FORM and if she failed to provide a response that it be inferred that she denied the allegations.

Applicant did not provide a response to the FORM or admit or deny the amended allegations. I conclude her failure to respond to the amended allegations as denials.

Findings of Fact

In Applicant's answer to the SOR, she admitted ¶¶ 1.a through 1.d, 1.f through 1.h, and 2.a, and 2.b, with explanations. She denied SOR ¶ 1.e. She failed to respond to the amended allegations in ¶¶ 1.i and 1.j in the SOR and I have considered these as denials. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 30 years old. She is not married. She has a four-year-old child from a previous relationship. The father does not provide child support. She served in the military from 2011 to December 2022 when she was honorably discharged in the paygrade E-5. She has worked for her present employer, a federal contractor, since December 2022.

Applicant completed a security clearance application (SCA) in March 2023. Under Section 26, with reference to her finances, she disclosed her "bank/credit cards were hacked into and maxed out." The current status was "in progress." She reported that the financial issue began in March 2022 and the amount was approximately \$5,000. She did not disclose any specific delinquent accounts that she was responsible for that were in

collection, charged off, or had been over 120 days delinquent or were currently over 120 days delinquent. (Item 3)

The SOR allegations are supported by Applicant's admissions in her answer to the SOR, credit reports from December 2023, July 2023, July 2019, and July 2017, and an FBI record from September 2021. (Items 2, 3, 4, 5, 6, 7, 9)

In Applicant's SOR answer, she stated the debt in SOR ¶ 1.a (\$16,728) was from fraudulent checks deposited into her account. She did not elaborate on what impact this had on the account, the action she took to correct it, and whether she contacted law enforcement. She also stated that she had a loan with the creditor that apparently was part of this account. She took out a loan to go to family court and for legal fees associated with a criminal charge discussed below. The debt was charged off, but the creditor offered to settle it with her for \$5,000. She provided an email in November 2023 stating she paid the debt in full. Her most recent credit report shows the account was paid for less than the full balance (\$5,018) in November 2023. This debt is resolved. (Items 2, 4)

Applicant admitted the debts in SOR ¶¶ 1.b (\$6,941), 1.c (\$3,293), and 1.d (\$2,954), but then said the three accounts to the same creditor were "hacked and charged." She said she attempted to dispute the debts but "ended up stuck." She intended to pay the debts. She did not provide any additional information as to the specifics of how she determined these were hacked accounts; were they credit card accounts she owned and she determined there were unauthorized charges, and if so, did she contact the creditor to dispute the charges; whether these were accounts fraudulently opened in her name without her authorization; what actions she took to dispute the debts; and if she had contacted law enforcement to report fraudulent activity. The credit report states the debt in SOR ¶ 1.b was opened in March 2019 and charged off in November 2022 and it said the "consumer dispute following resolution" and the last activity was March 2022; SOR ¶ 1.c was opened in October 2019 and the last payment was April 2022; and SOR ¶ 1.d was opened in August 2021 and the last payment was March 2022. Applicant did not provide any documentary evidence to show she resolved or has taken action to resolve these debts. (Items 2, 4, 5, 6)

Applicant denied the debt in SOR ¶ 1.e (\$1,384) stating she had paid the debt but would contact the company to verify it and pay the balance if owed. The debt is reported as charged off on the two credit reports from 2023 and past due on the 2019 credit report. She did not provide any documentary evidence the debt is resolved. (Items 4, 5, 6)

In an email from November 2023, Applicant stated that she had resolved the debts in SOR ¶¶ 1.f (\$442) and 1.g (\$181). She did not provide any documentary evidence to substantiate the debts are paid. She admitted in her SOR answer that she owes the debt in SOR ¶ 1.h (past due \$378 on balance \$1,147) for veterinary service. She said she had every intention of making payments and setting up a plan. She did not provide any evidence she has done so. (Items 2, 8)

The FORM provided to Applicant clearly states in bold:

Thus, absent additional documentary evidence, submitted in response to this FORM, that Applicant has mitigated the security concerns discussed above, the evidence submitted [by the Government] supports the ultimate conclusion that it is **not** clearly consistent with the national interest to grant or continue Applicant's eligibility for access to classified information.

Applicant did not respond to the FORM. She did not present any evidence regarding the debts in SOR ¶¶ 1.i and 1.j. They are both reported on her December 2023 credit report. SOR ¶ 1.i is an auto loan and ¶ 1.j is a store charge card. Both were charged off in December 2023. They are unresolved. (Item 4)

Applicant disclosed in her SCA that in April 2021 she was arrested and charged with driving under the influence of alcohol (DUI). She pleaded no contest to a reckless driving offense and entered into a one-year deferred disposition agreement. The charge was ultimately dismissed in May 2022. She was required to attend substance abuse education and her driver's license was revoked for one year. She disclosed and admitted that in June 2021 she went to a Uniform Code of Military Justice Article 15 nonjudicial punishment hearing as a result of the arrest and received extra duties. (Items 3, 9).

In Applicant's answer to the SOR, she said her record is now clear. She said she completed the court-ordered driving for life course and "was cleared by a substance abuse provider with no concerns of addiction/substance abuse." No documentary evidence was provided to substantiate her statements. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question her about the circumstances around her alcohol-related arrest and reckless driving conviction. I was unable to determine whether she continues to consume alcohol or whether she demonstrates a clear and established pattern of modified consumption or abstinence. I was unable to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). (Item 2)

Applicant stated in her SOR answer that she is a single mother. She does not receive child support and the father has removed his name from the birth certificate to avoid paying it. She is committed to managing her finances with honesty and integrity. She is devising a plan to pay off her debts while providing for her family. She is trying to gain financial stability. She recently started as a full-time student working towards her bachelor's degree. She intends to use her veteran's benefits to fund her education and other grants. She was waiting to learn her veteran's disability percentage rating. She intended to use her potential disability payments to resolve her debts. She is committed to resolving the challenges she faces. After she submitted her SOR answer, she provided an email in November 2023 stating she had received her veteran's disability rating but did not state if she was to receive a monthly payment. (Items 2, 8)

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 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 handing 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:

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

Applicant has numerous delinquent debts that remain unpaid. 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant admitted she owes most of the delinquent debts alleged in the SOR. All of the debts alleged in the SOR and the amended allegations are reported on her credit reports. Her debts are ongoing and recent. AG ¶ 20(a) does not apply. She attributed her financial difficulties to fraudulent checks that were deposited into her account but admitted some of the amount owed belong to her for a loan. She disputed some debts stating she had been hacked but failed to elaborate on actions she took. She also attributed her financial difficulty to being a single mother who is not receiving child support. Although some of these events may be beyond her control, the ultimate issue is did she act responsibly under the circumstances. She failed to provide evidence that the debts were due to fraud or criminal activity that she minimally reported to the police. She failed to explain the circumstances if she was hacked if there were fraudulent charges, accounts opened without her permission, or other things. There is one debt that appears she disputed on her credit report, but it was not resolved in her favor. There is insufficient evidence to conclude she acted responsibly. AG ¶ 20(b) has some application.

Applicant did not provide evidence that she has participated in financial counseling or that there are clear indications her financial problems are under control. AG ¶ 20(c) does not apply. She settled the debt in SOR ¶ 1.a after receipt of the SOR, which does not constitute a good-faith effort to resolve the debt when it occurred under the pressure of the security clearance process. AG ¶ 20(d) has some application because the debt is resolved. She stated some debts were resolved but despite being on notice to provide documentary evidence to substantiate her claims, she did not. Applicant's failure to address her delinquent debts until after realizing that they were an impediment to obtaining a security clearance "does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets." ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016.)

Applicant tangentially disputes the debts in SOR ¶¶ 1.b, 1.c, and 1.d stating she was hacked, but provided no factual specifics as to the claim. One credit report shows the consumer disputed a debt but it was not resolved in her favor. There is insufficient evidence to apply AG ¶ 20(e) to any of the debts.

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 in 2021. 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 was arrested and charged with DUI in 2021. She pled no contest to reckless driving and was placed in a diversion program, which she successfully completed, and the charge was dismissed in May 2022. She also went to an Article 15 nonjudicial punishment hearing for the arrest. She did not present evidence regarding the circumstances regarding her alcohol-related arrest; what her blood-alcohol content was; were others in the car with her; or whether she consumed the alcohol with others or by herself. She did not provide information about her current alcohol use or documentary evidence that she was cleared by a substance abuse provider with no concerns of addiction/substance abuse. She did not provide sufficient mitigating evidence to conclude that alcohol no longer impacts her judgment, reliability, and trustworthiness. Her blanket written statement alone is insufficient to apply any of the above mitigating conditions.

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 F and G in my whole-person analysis.

Applicant failed to meet her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations and Guideline G, alcohol consumption.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.j:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	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