



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00850
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

06/25/2024

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, financial considerations and Guideline J, criminal conduct. She mitigated the concerns Guideline H, drug involvement and substance misuse. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On June 9, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, H, and J. 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 June 14, 2023, and requested a hearing. The case was assigned to me on January 9, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 18, 2024, and the hearing was held as scheduled on February 14, 2024. The Government offered exhibits (GE) 1-12, which were admitted into evidence without objection. The Government's exhibit list and discovery letter were marked as HE I and II. Applicant testified and offered exhibits (AE) A-U, which were admitted without objection. DOHA received the hearing transcript (Tr.) on February 29, 2024.

### **Findings of Fact**

In Applicant's answer, she admitted all the allegations, except for selling marijuana during the timeframe of August 2021 to December 2021, as alleged in SOR ¶ 2.b, which she denied. Her admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 39 years old. She is divorced (married from 2008 to 2022). She has four children, ages 21, 17, 13, and 12. She provides total financial support for the three youngest children with no assistance from her ex-husband. Applicant's disabled mother also lives with her. She has taken some college courses. She was hired by her current employer in September 2022 and she was promoted to a quality engineer position in August 2023. (Tr. 7, 36; GE 1-2)

### **Financial Concerns**

Under Guideline F, the SOR alleged three bankruptcy filings in 2007, 2011, and 2015; and 12 delinquent debts totaling approximately \$36,900. (SOR ¶¶ 1.a-1.o) These bankruptcies and debts are established by Applicant's admissions in her November 2022 security clearance application (SCA), her admissions in her SOR Answer and at her hearing, and her credit reports. It was also alleged that in April 2014, Applicant was arrested, charged, and convicted of embezzling approximately \$150,000; and in 2006, she was charged and convicted of passing insufficient fund checks. (SOR ¶ 1.p) These allegations are established by her admissions in her Answer and at her hearing. (See further discussion below, under **Criminal Conduct** regarding the embezzlement and passing bad checks allegations.)

Applicant stated that her financial difficulties arose because her husband was not a steady income earner and because she was incarcerated for a year and was unable to work. Her most recent debts accrued from her marriage and subsequent divorce. Her 2007 bankruptcy was closed because Applicant did not complete a required financial management course, and her 2011 petition was dismissed for failing to appear at the creditors meeting. (Tr. 36-38; GE 5-6)

Applicant's 2007 bankruptcy petition listed total liabilities of approximately \$25,500 and total assets of \$6,000. Her 2011 bankruptcy petition listed total liabilities of

approximately \$142,800 and total assets of \$5. Her 2015 bankruptcy petition listed total liabilities of approximately \$75,000 and total assets of \$0. Her dischargeable debts listed in this petition were discharged in March 2016. (GE 5-7)

Applicant presented documentation showing that the debts listed at SOR ¶¶ 1.j, 1.k, and 1.o were paid through a settlement. Those debts are resolved. (Tr. 39, 41-42; AE A-B, Q)

Applicant filed her most recent Chapter 7 bankruptcy petition in December 2023. This petition was not alleged in the SOR, but was offered as evidence by Applicant to show that her remaining SOR debts (SOR ¶¶ 1.a-1.i and 1.l-1.n) have been included in this petition. Her total liabilities listed in this petition amounted to approximately \$73,000; and her total assets listed were approximately \$24,500. She also listed her total monthly net income as \$4,386 and her total monthly expenses as \$4,326, leaving a monthly remainder of \$60. There was no evidence presented that this petition was finalized or that the debts were discharged. I will not consider this 2023 bankruptcy petition for disqualification purposes, but I may consider it in assessing mitigation and in applying the whole-person factors. (Tr. 38-42; AE F-G)

Evidence admitted at hearing also documented that Applicant has had 10 liens filed against her, the three most recent occurring in 2016 (small claims judgment-\$22); 2019 (civil judgment-\$10,809); and 2020 (small claims judgment-\$1,000). In December 2023, Applicant established a payment plan with the IRS for unpaid federal income taxes for tax year 2021 in the amount of approximately \$9,800. She has made one payment under the plan. I will not consider the liens or federal tax debt for disqualification purposes, but I may consider them in assessing mitigation and in applying the whole-person factors. (Tr.61; GE 8; AE C-D)

## **Drug Involvement**

Under Guideline H, the SOR alleged that Applicant sold marijuana from January 2022 to at least February 2023. It also alleged that she picked marijuana leaves and sold marijuana from August 2021 to at least December 2021. (SOR ¶¶ 2.a-2.b)

Applicant admitted this conduct, except for selling marijuana from August 2021 to at least December 2021. During this timeframe, she lived in a state that legalized marijuana production and sale under state law. The state also regulated the growing and sale of marijuana within the state. Applicant obtained a marijuana license from the state and worked cultivating marijuana and later selling marijuana in state-regulated dispensary stores. While illegal under federal law, all her actions were legal under her state's law. Her marijuana license expired in August 2023 and she has not cultivated or sold marijuana since that time. (Tr. 42, 69, 74; AE H)

## **Criminal Conduct**

Under Guideline J, the SOR alleged that Applicant was arrested, charged, and convicted of embezzlement in 2014. It also alleged she was convicted of passing insufficient funds checks in 2006.

Before 2014, Applicant was employed as a financial secretary to a local union. She took out some loans from union funds. She paid back the first of such loans. She took out additional loans to pay her monthly expenses. She was terminated because she missed too many workdays caring for her sick mother. She did not pay back the loans. She testified that the unpaid loans totaled approximately \$14,000 to \$16,000. After she was terminated a federal investigation occurred and she was deemed responsible for misappropriating approximately \$150,000. In 2014, she ultimately pleaded guilty to the embezzlement charge and was sentenced to a year incarceration in federal prison, two years' probation, and ordered to pay restitution to the union. So far, she documented paying back approximately \$32,000, leaving approximately \$121,000 remaining. She completed her incarceration and her two-year probation period. She claimed to take responsibility for her actions, but she also stated she did not take all the money alleged. (Tr. 43, 45-47, 49-51, 67; GE 2; AE P; SOR Answer)

Applicant admitted passing bad checks in 2006. She blamed her actions on being young and unsophisticated with the way checks worked. Her mother did not educate her on the process. She made restitution. (Tr. 43; GE 2; SOR Answer)

## **Applicant's Mitigation.**

Applicant presented her 2022 and 2023 annual appraisals. She was rated as an overall strong performer for both years. Eight current or former coworkers wrote character letters supporting Applicant. They described her dedication to the job and her excellent performance. Several commented on her trustworthiness and many recommended granting her a security clearance. Applicant did not advise any of them about her past criminal or financial circumstances. (Tr. 70; AE I-L, N-O, S-T)

## **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 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(a), the entire process is a careful weighing 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 to obtain 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 about 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**

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant's financial difficulties extend back to 2007, when she first filed for Chapter 7 bankruptcy protection. That petition was closed without completion. She also filed in 2011, but that petition was dismissed. Her liabilities far outnumbered her assets listed in both petitions. In 2015, she filed under Chapter 7 and her debts were discharged. Since then, she has accumulated approximately \$36,000 worth of delinquent debts, listed in the SOR, which she included in her December 2023 Chapter 7 petition. She was convicted of passing bad checks in 2006 and embezzling over \$150,000 from her employer in 2015. I find the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are numerous and ongoing. She has demonstrated a long history of financial irresponsibility dating back to her first dismissed Chapter 7 bankruptcy in

2007. Her filing of another Chapter 7 in December 2023 is the most recent example of her inability to pay her debts. While bankruptcy is a legal means to rid someone of past debts, its use to resolve debts does nothing to assure a person's reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

While the accumulation of some of the Applicant's SOR debt may have been beyond her control because of her husband's lack of income production and her divorce, her crime of embezzlement, which sent her to jail for a year, was certainly within her control. Additionally, aside from recently settling three SOR debts and including the rest in her bankruptcy petition, she has not acted responsibly in trying to resolve her financial problems. She still has unresolved liens and she just recently established a payment plan with the IRS for past-due taxes. AG ¶ 20(b) does not apply.

Applicant received financial counseling, but there are no clear indications that her financial problems are being resolved. AG ¶ 20(c) does not apply.

Aside from the three settled debts, and attempting to discharge her remaining debts through bankruptcy, she has not demonstrated a good-faith effort to resolve her debts. Even the \$32,000 in restitution payments she has made are court ordered and more akin to an involuntary garnishment than a good-faith effort to repay. AG ¶ 20(d) has some application.

#### **Guideline H, Drug Involvement and Substance Abuse**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. One that is potentially applicable in this case is:

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

Applicant cultivated marijuana from August 2021 to December 2021, and sold it from January 2022 to February 2023. AG ¶ 25(c) applies.

AG ¶ 26 provides conditions that could mitigate security concerns. One potentially applies in this case:

(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.

Applicant cultivated and sold marijuana during the timeframe indicated while duly authorized by state law to do so. Her license to do so expired in August 2023 and she has not cultivated or sold marijuana since then. AG ¶ 26(a) applies.

### **Guideline J, Criminal Conduct**

The security concern relating to the guideline 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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case. The following is potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant convictions for passing bad checks in 2006 and embezzlement in 2014 establish the above condition.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and considered the following relevant:

(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.

Both of Applicant's crimes are somewhat dated, 2006 for the bad check charge and 2014 for the embezzlement offense. However, both crimes involved dishonest acts.



Even more troubling is that she embezzled over \$150,000 from her employer. She pleaded guilty to that charge, but she also seemed to waffle during her testimony about her actual guilt, thus failing to totally accept responsibility for her actions. She successfully completed her probation, but she still remains obligated to pay restitution. While some aspects of the above mitigating conditions are present, overall they are not controlling here.

### **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 considered Applicant's character letters and her performance appraisals.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guidelines F and J. She mitigated the concerns under Guideline H.

### **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.i, 1.k-1.n, 1.p:	Against Applicant
Subparagraphs 1.j - 1.k, 1.o:	For Applicant

Paragraph 2, Guideline H:  
Subparagraphs 2.a -2.b:

FOR APPLICANT  
For Applicant

Paragraph 3, Guideline J:  
Subparagraphs 3.a – 3.b:

AGAINST APPLICANT  
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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge