



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 23-02366
)
 Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

11/04/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline G (Alcohol Consumption), F (Financial Considerations), and J (Criminal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 2, 2022. On February 15, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines G and F. The DCSA CAS acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on April 4, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on April 30, 2024, and amended the SOR to cross-allege the Guideline G conduct under Guideline J. On May 6, 2024, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on July 16, 2024, and did not submit any additional information. The case was assigned to me on October 8, 2024.

The FORM consists of nine items. FORM Items 1 and 2 are the pleadings in the case. FORM Items 3 through 9 are the evidence in support of the allegations in the FORM. Applicant did not object to any items in the FORM. FORM Items 3 through 9 are admitted in evidence.

Findings of Fact

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a and 1.b. She admitted the allegations in SOR ¶¶ 2.c, 2.d, 2.e, and 2.g, with explanations. She denied owing the amounts alleged in SOR ¶¶ 2.a, 2.b, 2.f, and 2.h, but admitted the underlying debts with explanations. She did not admit or deny the allegation under Guideline J, and I have treated her lack of response as a denial. Her admissions are incorporated in my findings of fact.

Applicant is a 40-year-old employee of a federal contractor. She served on active duty in the U.S. Air Force from December 2005 to October 2016 and received an honorable discharge. She was unemployed from May 2022 to August 2022, having been fired for the conduct alleged in SOR ¶ 1.b. She was hired by her current employer in August 2022 and has been working in a call center pending the adjudication of her SCA. Her SCA reflects that she has held a security clearance in the past, but she does not currently have an active clearance.

Applicant married in October 2002 and divorced in December 2008. She has three children, ages 20, 19, and 10. She has been taking college courses since January 2022 but has not received a degree.

SOR ¶ 1.a alleges that Applicant was arrested in February 2016 and charged with driving while intoxicated (DWI). Applicant's children were staying with her former spouse's family and the family asked her to bring clothing and medicine for the children. The driving time to her former spouse's family was about one and a half hours. She was stopped by police, failed a "follow-the-finger" test, and was arrested. She posted bond and went to trial two months later. She was placed in a pretrial diversion program and was on probation for six months. She completed her probation without incident in December 2016 and the charges were dismissed in June 2017. (FORM Item 4 at 7; FORM Item 5 at 11-12)

SOR ¶ 1.b alleges that Applicant was arrested in March 2022 and charged with DWI. On March 1, 2022, police responded to a report of an unconscious driver on the road. The police found Applicant asleep in her vehicle, with the engine running and the transmission in “drive.” Her speech was slurred, she had urinated on one of her shoes, and she failed a field sobriety test. (FORM Item 6) During an enhanced subject interview (ESI) on October 26, 2022, she told a security investigator that she had taken a prescription drug before driving and was unaware of its potential side effects. (FORM Item 4 at 7) She denied consuming alcohol before driving, but admitted that she consumed alcohol on the night before the incident. (FORM Item 4 at 14) At the jail, she declined to provide a breath sample. She spent the night in jail and was released on bond.

At her trial on October 6, 2022, Applicant pleaded *nolo contendere*. The judge found that there was sufficient evidence to find her guilty, but he deferred the proceedings without entering an adjudication of guilt. He placed her on probation for 12 months, fined her \$750, and required her to undergo substance abuse testing when directed by her probation officer, to install an interlock ignition device, to complete a DWI education course, and to reimburse the county for the cost of the supervision program. She completed a “Lifeskills Offender Program” in November 2022 and a DWI Education Program in March 2023. (FORM Item 6)

In Applicant’s response to the SOR, she expressed remorse for her excessive alcohol consumption, acknowledged the serious nature of her conduct, and stated that she had sought and is receiving counseling. She did not provide any documentation of the nature and duration of any counseling after she completed the court-ordered counseling.

The SOR also alleges eight delinquent debts reflected in credit reports from April 2024, September 2023, and September 2022. (FORM Items 7, 8, and 9) The evidence pertaining to these delinquent debts is summarized below.

SOR ¶ 2.a: delinquent apartment rent charged off for \$4,569. During an ESI by a security investigator in October 2022, Applicant explained that she had to break her lease when she was required to move and relocate due to her son’s behavior at school. (FORM Item 4 at 9) This debt is not resolved.

SOR ¶ 2.b: appliance store debt charged off for \$3,515. During the ESI, Applicant told the investigator that she returned a television set because she could not afford it. This debt is not resolved.

SOR ¶ 2.c: charge account placed for collection of \$391. During the ESI, Applicant told the investigator that she tried to settle this account for less than the full amount, but the creditor insisted on the full amount. (Form Item 4 at 10) It is not resolved.

SOR ¶ 2.d: debt to insurance company past due for \$107. Applicant provided no information about this debt. It is not resolved.

SOR ¶ 2.e: debt to credit union for bad check for \$82. Applicant provided no information about this debt. It is not resolved.

SOR ¶ 2.f: telecommunication debt placed for collection of \$827. During the ESI, Applicant told the investigator that this debt was incurred when she switched cellphone providers, and that the debt was for the cost of the new telephone. (FORM Item 4 at 9) It is not resolved.

SOR ¶ 2.g: credit-card account charged off for \$506. Applicant admitted this debt during the ESI and stated that she could not afford to pay it. (FORM Item 4 at 9) It is not resolved.

SOR ¶ 2.h: credit-card account placed for collection of \$6,222. Applicant provided no information about this debt. A credit report from September 2022 reflects that this debt was for merchandise that was repossessed for nonpayment. (FORM Item 9 at 5) It is not resolved.

During Applicant's answer to the SOR, she provided evidence that she had hired a law firm to assist her in resolving her delinquent debts. (FORM Item 2 at 2) However, during the ESI, she told the investigator that she terminated her contract with the law firm in January 2023 because it had not resolved any of her debts. (FORM Item 4 at 10)

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, an administrative judge applies these guidelines 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 and 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 that 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 made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” 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* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. 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* at 531.

Analysis

Guideline G, Alcohol Consumption

The security concern under this guideline 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.” Applicant’s admissions and the evidence in the FORM, including the judge’s findings regarding the second incident, establish the following disqualifying condition:

AG ¶ 22(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.

The following mitigating conditions are potentially applicable:

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; and

AG ¶ 23(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.

AG ¶ 23(a) is not fully established. Applicant's alcohol-related behavior is arguably infrequent, since only two incidents are alleged. The second incident happened under unusual circumstances, *i.e.*, the interaction of alcohol with a prescribed medication. The closer question is whether sufficient time has passed to mitigate her conduct.

The first prong of AG ¶ 23(a) ("so much time has passed") focuses on whether the conduct was recent. There are no bright-line rules for determining when conduct is recent. The determination must be based on a careful evaluation of the evidence. If the evidence shows a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). Applicant's last alcohol-related incident was in March 2022, more than two years ago. However, she has been awaiting adjudication of her eligibility for a security clearance since she submitted her SCA in September 2022. She was on probation until October 2023. Under these circumstances, I am not satisfied that her alcohol abuse is mitigated by the passage of time.

AG ¶ 23(b) is not established. Applicant has expressed remorse, acknowledged her maladaptive alcohol use, and stated that she is participating in counseling. However, she has not provided evidence of the extent to which she has modified her alcohol consumption or provided documentary evidence of counseling.

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. . . . 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's admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

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;

AG ¶ 20(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;

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

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous, and did not occur under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant's divorce was a condition beyond her control. The lack of activity by the law firm she hired was a condition beyond her control. Her son's behavior that may have required her to relocate may have been a condition beyond her control. However, she has not acted responsibly. She submitted no evidence of efforts to contact her creditors or resolve her debts after she fired the law firm in January 2023. Her loss of employment after her DWI was due to her own misconduct.

AG ¶ 20(c) is not established. The law firm did not provide the type of financial counseling contemplated by this mitigating condition. She provided no evidence of counseling from a "legitimate and credible source." There are no "clear indications" that her financial problems are being resolved.

AG ¶ 20(d) is not established. Applicant submitted no evidence of good-faith efforts to resolve her debts.

AG ¶ 20(e) is not established. Applicant indicated in her answer to the SOR that she disputed the amounts of the debts alleged in SOR ¶¶ 2.a, 2.b, 2.c, 2.f, and 2.h, but she submitted no evidence of the basis for her disputes.

Guideline J, Criminal Conduct

The SOR cross-alleges the Guideline G allegations as criminal conduct under this guideline. The concern under this guideline 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." Applicant's admissions and the evidence in the FORM establish the following disqualifying condition:

AG ¶ 31(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.

The following mitigating conditions are potentially applicable:

AG ¶ 32(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

AG ¶ 32(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 condition is established, for the reasons set out in the above discussion of Guideline G.

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 G, J, and F 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 G, J, and F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by alcohol consumption, criminal conduct, and delinquent debts.

Formal Findings

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

Paragraph 1, Guideline G (Alcohol Consumption): **AGAINST APPLICANT**

Subparagraphs 1.a and 1.b: **Against Applicant**

Paragraph 2, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 2.a-2.h: Against Applicant

Paragraph 3, Guideline J (Criminal Conduct): AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge