



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



In the matter of:)	
)	
)	ISCR Case No. 23-02354
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
John Renehan, Esquire, Department Counsel

For Applicant: *Pro se*

01/23/2025

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant mitigated security concerns under Adjudicative Guidelines H (Drug Involvement and Substance Misuse) and F (Financial Considerations). Based upon a review of the administrative record in this case, national security eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted her Questionnaire for National Security Positions (Questionnaire) on August 15, 2022. (Item 3 attached to the Department Counsel’s File of Relevant Material (FORM).) On January 2, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Adjudicative Guidelines (AGs) H and F. (Item 1.) The action was taken under Executive Order 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 effective within the DoD after June 8, 2017.

On March 5, 2024, Applicant responded to the SOR in writing (Answer) and requested that her case be decided on the written record in lieu of a hearing. (Item 2.) In her Answer she admitted with explanations two of the three SOR allegations and admitted in part and denied in part the third. She also provided additional information.

On May 30, 2024, Department Counsel submitted the Government's written case in his FORM, consisting of his arguments in support of the SOR allegations along with documentary evidence. The FORM was provided to Applicant by letter, dated June 5, 2024. She received the FORM on or about June 14, 2024, and submitted a response, dated June 22, 2024 (FORM Response).

Department Counsel attached eight documents to the FORM, which he identified as Items 1 through 8. Items 1 through 6 are admitted into the record.

Item 7 is Applicant's partially completed and unsigned response to the Government's interrogatories. It includes a report of investigation (ROI 1) summarizing Applicant's March 21, 2023 interview with an investigator from the Office of Personnel Management (OPM). In the FORM Response, Applicant failed to respond to questions regarding the accuracy of ROI 1 and did not indicate whether she adopted the statement as her own. She provided responses to several questions regarding her tax returns and related issues, but she failed to sign her response. It is not apparent from the record whether the Government followed up with Applicant regarding the deficiencies of her response. Under these circumstances, I decline to admit this incomplete and unsigned document into the record.

Item 8 is a report of investigation (ROI 2) prepared by an OPM interviewer summarizing an interview of Applicant conducted on September 29, 2023. The Government did not request that Applicant adopt the ROI as her statement in the interrogatories identified as Item 7. Instead, Department Counsel advised Applicant in the FORM that she could comment on or make corrections to ROI 2 or she could object to its consideration in this proceeding due to the lack of a Government witness authenticating ROI 2. He noted that if she failed to object to ROI 2 in her response to the FORM, her silence may be considered a waiver of any objection.

In the FORM Response, Applicant asserted no objection to Item 8, raising the possibility, though unstated, that she may desire that the ROI be considered as evidence in the record. I have reviewed Item 8 and find the information therein adverse to Applicant is redundant to other evidence in the record. Accordingly, there is no need to consider the unauthenticated ROI as evidence in support of the SOR allegations. Moreover, Applicant's mishandling and confusion about Item 7, discussed above, raises doubts as to whether she understood Department Counsel's advisory statement regarding the possibility of waiver of objections if she did not specifically raise an objection to Item 8 in

her FORM Response. To the extent that Item 8 contains additional explanatory information supporting Applicant's case in mitigation, which she may have intended be included in the record by not objecting, I will give that evidence the weight warranted under the circumstances. Item 8 is admitted into the record for this limited purpose.

The case was assigned to me on September 12, 2024.

Findings of Fact

Applicant is 41 years old. She has married and divorced twice and has one minor child. She earned a bachelor's degree in 2015. She has worked as an engineer for a DoD contractor since August 2022. She experienced a six-month period of unemployment prior to a temporary job and then the commencement of her work with her current employer. Her August 2022 Questionnaire is her first application for a security clearance. (Item 3 at Sections 2, 12, 13A, 17, 18, and 25.)

Paragraph 1 - Guideline H, Drug Involvement and Substance Misuse

The Government alleged in this paragraph of the SOR that Applicant is ineligible for clearance because of her history of marijuana use. The SOR specifically alleges the following:

1.a. Marijuana use during the period June 2007 to January 2022. In her Answer Applicant admitted she used marijuana during the alleged time period. She first disclosed this fact in her Questionnaire. She wrote in both documents that she had no intent to ever use marijuana again. Her last use of marijuana precedes the commencement of her employment with a federal contractor and her Questionnaire. Applicant is very proud of her work in support of DoD and has found "a new deep purpose" in her employment. She appreciates that her employer does not tolerate illegal drug use, and she does not want to jeopardize her position and future with her employer. She also no longer associates with the "habitual" drug users with whom she used marijuana in the past, including her former spouse. (Item 2 at 2; Item 3 at 38-39; Item 8 at 3-4.)

Applicant wrote in her Questionnaire that, "My experience with Marijuana has run its course. I am no longer interested in it." She had used marijuana in the past as self-medication for depression. She also commented that "I am not the person I used to be." With her FORM Response, Applicant submitted a signed, sworn statement of her future intention to abstain from illegal drug use pursuant to the Guideline H mitigating conditions. (Item 3 at 38-39; FORM Response at 10, 37.)

1.b. 2009 Possession of marijuana arrest and conviction. In her Answer, Applicant admitted that she was charged with and convicted of Possession of Marijuana 2nd in 2009. The record reflects that she was fined and sentenced to 18 months of probation. (Item 2 at 3; Item 4 at 11.)

Paragraph 2, Financial Considerations

The Government alleged in this paragraph of the SOR that Applicant is ineligible for clearance because of her failure to file two federal income tax returns in a timely manner. The SOR specifically alleges the following:

2.a. Failure to file federal income tax returns for tax years (TY) 2018 and 2021 as required. Applicant denied the SOR allegations that she failed to file her return for TY 2018 on time and that it remained unfiled as of the date of the SOR. She admitted the SOR allegation that her federal income tax return for TY 2021 was not filed on time. The Government has not alleged in the SOR that this return remained unfiled. (Item 3 at 3-5.)

Applicant supported her denial of the allegations regarding her federal income tax return for TY 2018 with a copy of her IRS transcript for that tax year. The transcript reflected that her return was timely filed on March 11, 2019, and that she was due to receive a refund of \$3,089. (FORM Response at 21.)

In her Answer Applicant admitted that she filed her TY 2021 federal income tax return about one year late. She wrote that she knew that she owed taxes and did not file because she could not afford to pay the taxes due to unemployment and her recent divorce. She wanted to file the return once she was able to pay the taxes after obtaining new employment. The record reflects that Applicant was unemployed during the first four months of 2022 when the return was due. She wrote that she failed to file for an extension. With the issuance of the SOR asserting a security concern over her late filing of her TY 2021 federal income tax return, she understands her mistake. As noted, Applicant began working for her current employer in August 2022. She filed her federal income tax returns for TYs 2021 and 2022 on March 16, 2023. She also submitted to the IRS at that time a check in the amount of \$1,500 for her delinquent TY 2021 taxes. (Item 2 at 3-4; FORM Response at 8, 9.)

In her July 2024 FORM Response, Applicant documented that the IRS was continuing to have processing problems with her TY 2021 and 2022 income tax returns and was unable to produce account transcripts that reflect the filing of those returns. The processing problems were due to Applicant's divorce and change of address. At the same time, she legally changed her name and gender identification. She spoke with the IRS to try to update its records, but as of July 2024, she was told that it needed more time to resolve the discrepancies in the IRS identification records. Applicant was able to provide IRS documentation of her March 2023 payment to the IRS for her TY 2021 taxes. That transcript is dated June 22, 2024. It incorrectly reflects Applicant's former name and marital status. As noted, the Government has not alleged that Applicant's TY 2021 federal income tax return remains unfiled, only that it was filed late. (SOR at 1; FORM at 4-5; FORM Response at 14, 35-36; Item 8 at 1.)

Policies

When evaluating an Applicant's suitability for national security eligibility, 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 to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 - Guideline H, Drug Involvement and Substance Misuse

The security concerns relating to the guideline for drug involvement and substance misuse are set out in AG ¶ 24, which reads as follows:

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 sets forth the following condition that could raise security concerns and may be disqualifying in this case:

- (a) any substance misuse (see above definition).

Applicant's admitted use of marijuana in the past establishes the above potentially disqualifying condition. Accordingly, the burden shifts to Applicant to mitigate the security concerns raised by the facts of this case.

AG ¶ 26 of this guideline provides conditions that could mitigate security concerns. I considered all the mitigating conditions under AG ¶ 26 and conclude that the following two conditions have possible application to the facts of 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; and

- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken 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 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's last use of marijuana was three years ago. She showed her integrity by reporting her past use of marijuana in her Questionnaire. She stated in her application that she has no intention to use marijuana in the future. She has abstained from further use and has shown that her past use of marijuana does not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 26(a) is established.

Applicant's written statements have also established AG ¶ 26(b)(1) and (b)(3). She has acknowledged her past drug involvement in her August 2022 Questionnaire and has taken steps to overcome the problem, specifically by no longer associating with habitual drug users, including her former spouse. Her March 2024 signed, sworn statement of her intent to abstain from the use of illegal drugs provides evidence of a pattern of abstinence and confirms her intent to move on from her past drug use. This statement also confirms her other evidence that in 2022 she made significant changes in her life and is no longer the same person who used drugs in the past.

Paragraph 2 - Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes a condition that could raise security concerns and may be disqualifying in this case:

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The Government did not establish that Applicant failed to file her TY 2018 federal income tax return as required; indeed, she provided documentation to rebut the

allegation. The Government did establish the above potentially disqualifying condition with respect to her untimely filed TY 2021 federal return.

The guideline includes seven conditions in AG ¶ 20 that can mitigate security concerns under this guideline. The following three conditions have possible application to the facts of this case.

(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;

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

(g) the individual has made arrangements with the appropriate tax authority to file or p(ay the amount owed and is in compliance with those arrangements.

Applicant's untimely filing of her TY 2021 federal income tax return happened some time ago, was an isolated incident, and occurred under the circumstances of her owing taxes at a time she had been unemployed for several months. She now understands that she made a mistake by failing to file her return even though she could not pay the taxes owed. Under these circumstances, her behavior is unlikely to recur and does not cast doubt on her current reliability, trustworthiness, or judgment. AG ¶ 20(a) applies.

AG ¶¶ 20(d) and (g) also apply because Applicant made a good-faith effort to resolve her tax return filing delinquency, filed her TY 2021 federal income tax return, as well as her TY 2022 federal income tax return, in March 2023, and paid the overdue taxes for TY 2021 after she obtained new employment and regained financial stability.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility by considering the totality of the applicant's conduct and all relevant 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has mitigated the security concerns raised by her past use of marijuana and her failure to file her TY 2021 federal income tax return as required. She has sufficiently minimized the potential for pressure, coercion, or duress, as well as the likelihood of recurrence. Overall, the record evidence leaves me without any questions or doubts as to Applicant's suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

JOHN BAYARD GLENDON
Administrative Judge