



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 23-00740

Appearances

For Government: John C. Lynch, Esq., Department Counsel

For Applicant: *Pro se*

04/02/2025

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guidelines J (Criminal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 28, 2022. The Department of Defense (DoD) determined that it was unable to find that it was clearly consistent with the national interest to grant her access to classified information, and on May 12, 2023, it sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines J (Criminal Conduct). The DoD acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on June 6, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 29, 2024, and the case was assigned to me on September 4, 2024. On September 10, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 4, 2024. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant did not submit Applicant's Exhibits (AE) at the hearing. I kept the record open, and through four emails she timely submitted AE A through AE X, consisting of court payments, work performance and education, volunteer actions, and her military history, which were admitted without objection. DOHA received the transcript (Tr.) on December 12, 2024.

At the hearing Government counsel moved to amend SOR ¶ 1.b by striking the language **"You were arrested in about April 16, 2021, in [Z] and charged"** and substituting the language **"In about September 2021, you were charged in [Z]."** Applicant did not object to the exception and substitution and was ready to proceed with the hearing. (Tr. 7-8.)

Findings of Fact

In Applicant's answer to the SOR, she admitted all the allegations. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 60-year-old program manager employed by a federal contractor in support of airport operations. She was hired by her employer in 2013. She worked overseas in an area of operations that a military member would receive imminent danger pay. She earned her bachelor's degree in 1994 and master's degree in 2022. She has continued to do training in project management to expand her master's degree education. She was recently promoted to her current position based on her performance over the past five years, which does not require a security clearance. She has been married since 2001. She has four adult children and two grandchildren. She served honorably in the Marine Corps from 1988 until 2008 and retired as a Gunnery Sergeant. She held a security clearance while on active duty. She earned one Navy and Marine Corps Commendation Medal and two Navy and Marine Corps Achievement Medals during her service. (GE 1; AE A; Tr. 17-18, 20-21, 23, 44, 51, 70-73.)

Applicant receives veterans' disability payments from the Veterans Administration (VA), based her 90% disability rating by the VA, and military retired pay. Her total compensation amount between her VA disability payment and military retired pay is about \$3,700 a month. Her husband is 100% disabled and has been unable to work since 2014. His disability is due to combination of injury and illness. Her husband's initial injury dates back to 2007. He receives a disability payment from the state of \$1,500 a month. Between her salary, military retired pay, and the disability payments their total income for the past year was about \$155,000. She filed for bankruptcy in 2000. In her Answer she cited her daughter's medical conditions and college expenses for her "stupid decision" to shoplift. (Tr. 18, 21-22, 43, 51-53.)

The SOR alleges two criminal prosecutions involving thefts from three locations from a hobby and craft store chain between April 2021 and July 2021. Applicant listed the

prosecutions on her SCA. She testified she entered the three stores “15 to 20” times to steal the same item, which she then sold at a discount on a social media marketplace. The item she was stealing could fit in her purse. She did not enhance her purse to defeat any store antitheft detection capabilities. The most she ever took at one time was 10 items. The value of one item was between \$8 and \$14. She would sell “10 [items] for \$40, and some people would try to bargain better” for the items. The stores were all about 30 to 45 minutes from her home. One of the stores was five minutes from her workplace and the other was near where her grandson lived. She never brought her grandson along when she was shoplifting. She sold enough product that the social media marketplace generated a tax form for \$760 for tax year 2022. The hobby and craft store chain’s product had its own distinct look, but the product was available at other chains of hobby and craft stores. (GE 1; Tr. 24-33, 55-59.)

Applicant explained that the police officers investigating the thefts alleged in SOR ¶ 1.a came to her home in August 2021. She had stopped stealing in July 2021. She was not home but the officers left a message with her daughter for her to contact them. Applicant contacted the officers and made a full confession. Because her conduct occurred during the COVID pandemic, she did not interact with the police officers who investigated the SOR ¶ 1.b conduct. Because of her cooperation with the officers investigating the thefts alleged in SOR ¶ 1.a, the officers investigating the thefts alleged in SOR ¶ 1.b were able to use her video confession. She reported the criminal cases to her facility security office (FSO) after she received the court papers. (Answer; GE 2, GE 3; Tr. 33-35, 71-72, 91.)

Applicant has not informed her husband of her shoplifting. When she has had to deal with court cases and this administrative hearing, it has always been during working hours, so she has not felt the need to tell him. Given his physical condition and pain medications she does not want to bother him. She acknowledged that her husband’s past work in the corrections field was another reason for not disclosing these incidents. She denied she was in fear of her safety if she did disclose these incidents to him. She stated she does not want a confrontation and an argument with him because she does not want to give him an opening for an argument or to judge her. She described him as very judgmental, self-centered and selfish. Both her daughters know of her legal situation. (GE 5; Tr. 35-36, 47, 62-63, 92.)

Applicant received two years of probation, with the first year supervised, for the thefts alleged in SOR ¶ 1.a. She had no probation violations, and the second year was waived. Her probation terminated in January 2023. She also paid \$3,600 in restitution to the hobby and craft store chain. For the thefts alleged in SOR ¶ 1.b, she pled guilty and was placed on unsupervised probation for one year, and she paid \$2,000 in restitution. Prior to this shoplifting scheme, she had no prior criminal charges. (GE 2, GE 3; Tr. 36-42, 69.)

Applicant explained, during the hearing, how her daughter’s problems eventually led her to shoplift. Her youngest daughter suffers from heart conditions and panic attacks, which require a service dog, and her daughter has been out of work for a while. The daughter was also going back to college, and Applicant was “trying to keep all her college bills afloat” as well as her daughter’s housing expenses so that her daughter could go to

school. Applicant did not tell her daughter she was struggling to pay her own house expenses, her daughter's education, and her daughter's housing expenses. Applicant stated that "it was personal pressure" she placed on herself that caused her to shoplift. (Answer; GE 5; Tr. 44-47, 50-51, 68.)

Applicant noted all six of her siblings have been in jail at some time. This fact "scares the world out of [her]." She explained she is now in their world and does not like it, which is her deterrence. (Tr. 90.) When asked why it is unlikely this conduct would reoccur, she responded:

I don't want to go to jail. I already have a criminal record at this point, I don't want to go to jail. I can't do this anymore. I have to cut off. And the last of all the bad is out. And it makes no sense to you, but I come from a pretty screwed-up family, and I stepped in a pile I created myself when I did this, and I don't want to do it again. I mean, I'm not going to do it again.

Right now, my sister -- my sister is back in jail right now, and I'm not going to be with her. I'm not going to do this. I -- it just -- I have to rise above the mess. (Tr. 67.)

Applicant explained her family is important to her. She is busy helping her daughters who gave her grandchildren within 15 months of each other. In addition to helping her family, she has participated in various programs to raise awareness and support for persons in need. (AE C, AE D; Tr. 65, 74-75.)

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 her 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*, 484 U.S. at 531. “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. See 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 her 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*, 484 U.S. at 531.

Analysis

Guideline J, Criminal Conduct

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 presented at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 31(a): a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual’s judgment, reliability, or trustworthiness; and

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 relevant:

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.

AG ¶ 32(a) is established for SOR ¶¶ 1.a and 1.b. Applicant's misconduct and arrests occurred in 2021. Sufficient time has elapsed since her criminal behavior. She has no desire to follow the path of her siblings' history of criminal misconduct. Given her other siblings criminal histories she is focused on not getting into further legal troubles. I conclude that the instances of misconduct alleged in SOR ¶¶ 1.a and 1.b are mitigated by the passage of time and further criminal conduct is unlikely to recur and does not cast doubt her current reliability, trustworthiness, or judgment.

AG ¶ 32(d) is established for SOR ¶¶ 1.a and 1.b. Sufficient time has passed to establish evidence of successful rehabilitation. There has been no recurrence of criminal activity. Applicant made restitution, complied with the terms of her probation for both convictions, and had the second year of probation waived for her first criminal conviction. She has continued her work education, maintained a good employment record, and demonstrated constructive community involvement. Applicant successfully mitigated the criminal conduct security concerns.

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 Guideline J in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. I have considered that Applicant served honorably in the U.S. Marine Corps. I have considered her family situation and her choice to not discuss this matter with her husband. Given her willingness to disclose to her other family members, and looking at the whole person evidence, I am confident that her current decision to not disclose to her husband could not be used to compromise her. After weighing the disqualifying and mitigating conditions under Guidelines J and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her criminal conduct.

Formal Findings

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

Paragraph 1, Guideline J:

FOR APPLICANT

Subparagraphs 1.a-1.b:

For Applicant

Conclusion

Considering all of the circumstances, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Charles C. Hale
Administrative Judge