



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 24-02377

Applicant for Security Clearance

Appearances

For Government: Daniel O'Reilley, Esq., Department Counsel
For Applicant: *Pro se*

09/29/2025

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant has not mitigated the security concerns raised under Guideline J (criminal conduct). National security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions on March 8, 2024 (Questionnaire). On February 21, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J. 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 (AG) effective within DoD after June 8, 2017.

Applicant responded to the SOR allegations on March 27, 2025 (Answer). She attached 17 documents, which I have marked as Answer Attachments A through Q, and

she requested a hearing before an administrative judge from the Defense Office of Hearings Appeals (DOHA). Department Counsel was prepared to proceed on April 25, 2025. The case was assigned to me on July 1, 2025. DOHA sent Applicant a Notice of Hearing on July 17, 2025, scheduling the case to be heard via Microsoft Teams video teleconference on August 11, 2025.

I convened the hearing as scheduled. Department Counsel offered four documents marked as Government Exhibits (GE) 1 through 5. Applicant testified but did not offer any documentary evidence aside from Answer Attachments A through Q. I kept the record open until August 18, 2025, to give Applicant and Department Counsel the opportunity to supplement the record. On August 12, 2025, Applicant submitted a nine-page exhibit, which I marked as Post-Hearing Exhibit R. Department Counsel made no further submission. The record closed on August 18, 2025. All exhibits are admitted into the record without objection. DOHA received the transcript of the hearing (Tr.) on August 18, 2025. (Tr. at 13.)

Findings of Fact

Applicant is 37 years old. She received a bachelor's degree in 2012. She has worked for her current employer as a manager since June 2022. She also works part time for a private company. She was granted national security eligibility in 2023. She has never married and has no children. (Tr. at 21-25; GE 1 at 5, 11-13, 28, 49.)

The Government alleged in the SOR that Applicant is ineligible for a security clearance due to her criminal conduct. I find the following facts as set forth in the pleadings, developed at the hearing, and detailed in the documentary record.

Paragraph 1, Guideline J (Criminal Conduct)

Under this guideline, the Government alleged that Applicant has been arrested five times since December 2012 and charged with criminal conduct. In her Answer, Applicant admitted each of the five allegations and provided additional information.

SOR ¶ 1.a. December 2012 Arrest and Charges. In December 2012, Applicant was arrested and charged with possession of cocaine, possession of a controlled substance, and promoting prison contraband. At the time of Applicant's arrest, her friend had parked her car in an alley and went inside a nearby house of the friend's relative. Applicant was seated in the front passenger seat. A police car stopped behind the car. Applicant moved from the passenger side to the driver's side so she could move the car out of the alley while her friend was inside. She made an illegal turn and the police stopped the car. The police then searched the car and found a plastic bag with cocaine residue. The police then searched Applicant and arrested her. Applicant had two Lortab pills in her purse, but the police did not find them when they searched her. Lortab is a Schedule II controlled substance containing hydrocodone. She was taken to the local jail and booked. At that time, the police found the Lortabs in her purse. At the DOHA hearing,

Applicant claimed that this prescription drug was legally prescribed for a friend who gave her the drug for headaches, and that she used the pills for a brief period. (Answer at 1, 4; Tr. at 30-35; GE 2 at 12-13; GE 3 at 11.)

The court ordered that Applicant participate in a pre-trial diversion program to avoid further prosecution. The program involved an eight-week period of treatment, and six months of supervised probation followed by up to two years of unsupervised probation. Applicant completed the treatment program in June 2013. On March 27, 2014, the court entered an order to *nolle prosequi* the charges on the motion of the state prosecutor and ordered the charges to be expunged. (Answer at 4; Answer Attachments A through E; GE 3 at 31.)

SOR ¶ 1.b. July 2019 Arrest and Charge. In December 2018, Applicant worked as a cashier in a department store for about six months. After her employment ended, the employer wrote her a letter advising she owed \$570 in restitution. Applicant admitted at the DOHA hearing that she had been discounting merchandise bought by family and friends. She claimed that she repaid the money after receiving the letter. The employer also filed a complaint against her for unauthorized discounts and price adjustments totaling over \$500. The police obtained a warrant for Applicant's arrest on a charge of theft of property, a felony. In July 2019, she was stopped by the police for a minor traffic offense and was arrested when the police discovered the outstanding warrant. She testified she was unaware of the existence of the warrant at the time of her arrest. (Answer at 1, 5; Tr. at 35-43; GE 1 at 36-37.)

Applicant was charged with felony theft of property. She completed a pre-trial intervention program. When she completed the program, the court *nolle prossed* the charges and ordered that they be expunged. (Answer Attachment F and G.)

SOR ¶ 1.c. June 2021 Arrest and Charge. In July 2019, Applicant was arrested and charged with driving under the influence of alcohol (DUI). Her blood alcohol content (BAC) was 0.19. To resolve the charge, the court ordered that she complete a DUI diversion program consisting of 12 hours of classes. She was also required to attend four Alcoholics Anonymous (AA) sessions and install an ignition interlock device on her car for one year. The court placed her on probation for two years, which was terminated early when she completed the other terms of the diversion program. She continued with the AA meetings after she completed the four required sessions to help her "well-being." Again, the charge was *nolle prossed* and her criminal record was expunged in 2022. (Answer at 1, 5; Tr. at 43-48; Answer Attachments at H; GE 1 at 37-38, 45-46; GE 3 at 29.)

SOR ¶ 1.d. May 2023 Arrest and Charges. In May 2023, Applicant was indicted on three counts of felony false statement to a federal agency. At the suggestion of her tax advisor, she had submitted false documents in 2021 in support of claims under the Federal Paycheck Protection Plan, which was intended for persons who suffered losses of income to their businesses due to the COVID-19 pandemic. She had just started a new business in 2020. She received approximately \$52,000 in payments from the Federal

Government in 2021. She blames her tax advisor for preparing false documents for her to sign. She pleaded guilty to one of the three counts in November 2023. She was required to serve six-months of “at home” detention, which allowed her to go to work and attend doctor appointments. She was also required to serve three years on probation. Applicant paid the required restitution in full and was released from probation in January 2025, notwithstanding the state criminal charges against Applicant, as set forth in SOR ¶ 1.e, below. (Answer at 2, 6-7; Tr. at 49-63; Answer Attachments J through L; GE 4 at 24-27, 28-33.)

SOR ¶ 1.e. November 2023 Arrest and Charges. In November 2023, the same month she pleaded guilty to the charge above (SOR ¶ 1.d), Applicant and others were driving in a car near a state correctional institute. Applicant testified that she thought they were going to a casino that was nearby but they took a detour. The vehicle stopped near a prison and one of the other passengers exited the car. Applicant claimed that she was “dozing off” before the car stopped, not knowing what was going on. Shortly thereafter, the police arrived and arrested Applicant. She testified that she was driving to a casino with a female family member and two men. She understands that the contraband involved was cellphones, knives, charging blocks and cords, and ear buds. Everyone in the car was arrested. The police charged Applicant with three felonies, promoting prison contraband, intent to deliver a cellular phone to an inmate, and criminal trespass. On April 29, 2024, Applicant was indicted by a state grand jury and charged with these offenses. She “thinks” her relative in the car was also indicted. She is unsure whether the two men in the car with her were indicted. On May 7, 2024, Applicant pleaded not guilty to the charges. A December 2024 trial date has been continued to a future, unscheduled date. (Answer at 2, 7; Tr. at 65-83; Answer Attachments M and O; GE1 at 40-42; GE 4 at 1-5.)

Whole Person

Applicant presented four character reference letters, two from defense attorneys who have represented her in two of her criminal cases, one from her parttime employer, and one from her church pastor and counselor. Each letter supported Applicant’s case for her eligibility for a security clearance. The lawyer in her pending case noted that she has not been convicted of any crime in that case and is therefore presumed to be innocent of the charges against her. The lawyer who represented her in the federal fraud prosecution commented that she worked with the Government to help it prosecute others involved in the fraud. Her employer’s representative praised Applicant for her reliability and commitment to change. Her pastor and her counselor have known Applicant for more than 20 years and praise her reliability and active involvement in their church. (AE N through AE Q.)

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 (AG) 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 J (Criminal Conduct)

The security concern under this guideline is set out in AG ¶ 30 as follows:

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 four conditions that could raise security concerns. The following condition has possible application to the facts of this case and may be disqualifying:

(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 record evidence establishes the above potentially disqualifying condition. Accordingly, the burden shifts to Applicant to rebut, extenuate, or mitigate the security concerns raised by her criminal conduct.

AG ¶ 32 sets out four mitigating conditions under Guideline J. The following two conditions have possible application to the facts in this case:

(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.

Neither mitigating condition applies. Applicant committed a serious felony offense in 2021 and was convicted in 2023 for her fraudulent activities during the pandemic. A grand jury has found probable cause to indict her for three additional serious felony charges arising out of her conduct in November 2023. Those charges remain pending. Insufficient time has passed. Applicant's criminal history during the period 2012 to 2023 casts serious doubts about her reliability, trustworthiness, and judgment. Moreover, it is far too soon to determine that she has shown successful rehabilitation. She has not taken responsibility for her federal fraud crimes, and her denials of any involvement in the November 2023 crimes at the state prison do not begin to establish mitigation under AG ¶ 32(d).

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 must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the above whole-person factors and the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have considered the views of Applicant's character witnesses. I have weighed the fact that Applicant has complied with all of the court-ordered terms required for the dispositions of the criminal proceedings described above in SOR ¶¶ 1.a through 1.d. However, Applicant's criminal conduct during the period 2012 through 2023 evidences a serious pattern of disregard for the behavior restrictions imposed by criminal laws. Applicant's federal fraud crimes discussed under SOR ¶ 1.d shows a significant amount of dishonesty and poor judgment as does the felony theft charge against her for her actions as a department store cashier (SOR ¶ 1.b). She may or may not be convicted of her most recent charges. The fact that she was indicted by a grand jury on three felonies is substantial evidence of recent criminal conduct. Overall, the record evidence leaves me with serious questions and 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 J:

AGAINST APPLICANT

Subparagraphs 1.a through 1.e:

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 national security eligibility. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge