



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-03198
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2015

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations), E (Personal Conduct), and J (Criminal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 12, 2013. On September 12, 2014, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines F, E, and J. The DOD acted under Executive Order 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 DOD on September 1, 2006.

Applicant answered the SOR on November 17, 2014, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 16, 2015, and the case was assigned to me on January 29, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 6, 2015,

scheduling the hearing for February 26, 2015. The hearing was cancelled due to a blizzard and government shutdown. DOHA issued a second notice of hearing on March 11, 2015, rescheduling the hearing for March 26, 2015. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified but did not call any witnesses or present any documentary evidence. I kept the record open until April 17, 2015, to enable her to present documentary evidence, but she did not submit anything. DOHA received the transcript (Tr.) on April 7, 2015.

Findings of Fact

In her answer to the SOR, Applicant admitted the debts alleged in SOR ¶¶ 1.d-1.q. She stated that she was trying to identify the debts alleged in SOR ¶ 1.a-1.c and 1.r. I have treated her responses to SOR ¶¶ 1.a-1.c and 1.r as denials. She admitted SOR ¶¶ 2.a-2.g and 3.a. I have incorporated her admissions in her answer and at the hearing in my findings of fact.

Background Information

Applicant is a 33-year-old employee of a defense contractor. She has worked for her current employer since October 2013. She believes she had a clearance in 2006-2008, when she worked for the U.S. Army. She does not have a current clearance. (Tr. 10.)

Applicant graduated from high school in June 1999. She served on active duty in the U.S. Army from June 1999 to November 2001. On her SCA, she stated that she received a general discharge and that it was “other than honorable” based on misconduct. (GX 1 at 26.) At the hearing, she testified she received a general discharge under honorable conditions for “missing PT [physical training] formations.” (Tr. 86-87.)

Applicant married in February 2002 and divorced in August 2010. She and her husband had two children, now ages 12 and 9. (Tr. 36-37.)

Appellant accompanied her husband, an active-duty soldier, when he was assigned overseas, and she worked in a military commissary from April 2006 to March 2008. She was unemployed from March to May 2008. She worked in a military mail facility from May to December 2008, and she left that job when her husband was reassigned to a stateside location. She was unemployed from December 2008 to August 2010. She worked in the private sector from August to December 2010, when she left her job for a “personal emergency.” She was unemployed from December 2010 to February 2011 and from January 2012 to August 2012. She worked in the retail private sector from August 2012 to March 2013. She worked for a temporary employment agency at a naval shipyard until October 2013, when she began her current job.

Applicant was recently promoted to a team leader position, and she supervises five other employees. (Tr. 31, 85.) She works 60 hours a week, earning \$12.26 per hour. Her take-home pay every two weeks is between \$1,000 and \$1,100, and she receives \$1,000 per month in child support from her former husband. (Tr. 40-42.) She testified that she usually has "a few hundred dollars" left at the end of each month. (Tr. 46.)

Since December 2011, Applicant has completed three years of a four-year college program leading to a bachelor's degree in electronic engineering technology. (GX 1 at 14; Tr. 33.) She has incurred about \$15,500 in student loans, which are currently deferred. (GX 6 at 2-3; Tr. 39.)

Criminal and Personal Conduct

In May 2009, Applicant was charged with driving under the influence (DUI) and speeding. Her breathalyzer reading was .156%. (GX 4.) The record does not reflect the disposition of these charges. Applicant testified that this incident occurred after she found out that her husband was sexually involved with her underage cousin, who was in her legal custody and living with them. She began drinking during an argument with her husband and her cousin, left the house, and continued to drink while driving. She testified that she became lost and was stopped by the police after they noticed that she was repeatedly braking. (Tr. 28, 73-74.)

In August 2011, Applicant was convicted of driving on a suspended license, driving without insurance, and following too close resulting in an accident. She testified that she had the accident while she was driving her son to the hospital after he injured his arm. (Tr. 30.) She was convicted, sentenced to 90 days in jail (suspended), fined, and ordered to pay court costs. Her driver's license was suspended for 90 days. (GX 3 at 6-10.) The three occupants of the vehicle she hit obtained civil judgments against her.

In September 2011, Applicant was convicted of failure to appear in court. She was ordered to pay court costs. No other punishments were imposed. (GX 3 at 1.)

In February 2012, Applicant was convicted of driving on a suspended license. She was fined \$50, and ordered to pay court costs. (GX 3 at 3.)

In November 2012, Appellant was convicted of driving on a revoked license and DUI (1st offense) with a blood-alcohol level between .15 and .20. For driving on a revoked license, she was sentenced to 90 days in jail (70 days suspended), unsupervised probation for 24 months, a \$250 fine, and court costs. For the DUI, she was sentenced to 365 days in jail (355 days suspended), unsupervised probation for 12 months, a \$250 fine, and court costs. She was required to complete a ten-week alcohol safety action program (ASAP) and attend Alcoholics Anonymous (AA) meetings. (GX 2; GX 3 at 12-15; Tr. 79.) This incident occurred when Applicant went to a wake for a friend. She could not find anyone to drive her to a friend's wake. She decided to drive,

even though her license was revoked, and she consumed alcohol in the car while driving. (Tr. 30)

In September 2013, Appellant was convicted of driving on a revoked license. She was sentenced to 90 days in jail (75 days suspended), a \$150 fine, and court costs. (GX 3 at 4.)

In December 2013, Appellant was charged with driving after forfeiture of her license. (GX 2.) The record does not reflect the disposition of this charge. As of the date of the hearing, her license had not been restored. She testified that she has paid more than \$8,000 in fines for her driving offenses.

Appellant has a restricted license from the jurisdiction where the May 2009 DUI occurred, and she is unable to obtain a license in the jurisdiction where she lives and works. Her restricted license requires her to have an ignition interlock for 11 more months. Once the interlock is no longer required, she will be able to obtain a local driver's license. (Tr. 80-81.) She testified that she last consumed alcohol at a friend's birthday party in March 2014. (Tr. 89.) There is no evidence of a diagnosis or evaluation of her alcohol consumption by a medical professional.

Financial Considerations

Applicant's January 2014 credit bureau report (CBR) reflected seven unsatisfied judgments against her and 11 delinquent debts referred for collection. (GX 5.) Three of the judgments (SOR ¶¶ 1.d (\$2,400), 1.f (\$2,000), and 1.g (\$7,000) were obtained in 2013 by the occupants of the vehicle that Applicant rear-ended. (Tr. 46.) She negotiated a payment agreement for the judgment in SOR ¶ 1.g, providing for an initial payment of \$1,000 and monthly \$125 payments. (Tr. 53.) As of October 2014, she had reduced the balance from \$7,000 to \$1,407. (Enclosure to Answer to SOR.) She testified that she has reduced the balance to about \$600. (Tr. 47.) She was given additional time after the hearing to provide documentary evidence of the \$600 balance, but she did not submit anything. She has not taken any action to resolve the judgments in SOR ¶¶ 1.d and 1.g.

The judgments in SOR ¶¶ 1.a-1.d and 1.e were obtained in 2010 and 2011 for nonpayment of rent caused by Applicant's unemployment. She was evicted twice. (Tr. 56-57.) The SOR alleges two medical bills (SOR ¶¶ 1.h and 1.i), a cable service bill (SOR ¶ 1.j), two electric bills (SOR ¶¶ 1.k and 1.m), a collection account (SOR ¶ 1.l), a cell phone bill (SOR ¶ 1.n), two credit card accounts (SOR ¶¶ 1.o and 1.q), a DVD club account (SOR ¶ 1.p), and a satellite television account (SOR ¶ 1.r).

Appellant contacted one of her former landlords, the electric power company in SOR ¶¶ 1.k and 1.m, the credit card account in SOR ¶ 1.o, and the DVD club in SOR ¶ 1.p., but she has not made any payments or payment agreements. (Tr. 63-64.) She has not contacted the collection agency for the medical debts in SOR ¶¶ 1.h and 1.i. or the cell phone account in SOR ¶ 1.n. She has not determined who the original creditor is for the collection account in SOR ¶ 1.l, but she thinks the debt may be for unpaid fines. She

testified that she received a telephonic settlement offer for the credit card account in SOR ¶ 1.q but had not acted on it. She provided no documentation of any of her contacts with creditors. She denied that she had an account with the satellite television service and testified that the service could not find an account in her name. She has not filed a dispute with the satellite service provider or the credit reporting agencies. (Tr. 63-69, 88.)

The electric bills alleged in SOR ¶¶ 1.k and 1.m appear to be duplicates. The dates of last activity for accounts are February 2011, and the amounts are within a dollar of each other. (GX 5 at 6.) The evidence indicates that the creditor in SOR 1.m is the primary creditor, and the creditor in SOR ¶ 1.k is a collection agency for the primary creditor. Applicant testified that she had recently made a payment agreement with the electric company, but she provided no documentation of any agreement, even though she was given additional time after the hearing to provide it. (Tr. 43.)

Applicant also testified that she had complained to her landlord about her high electric bill, which was about \$1,500 for the last month. She has not determined whether something beyond her control is causing the high electric bills. (Tr. 44.)

Applicant testified that she has not sought or obtained financial counseling, but she did receive some advice from her facility security officer after she received the SOR. (Tr. 51-52.) She has considered obtaining a debt consolidation loan but has not taken any steps to do so. (Tr. 69-70.) She does not have a written monthly budget. (Tr. 87.)

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” See 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

The electric bills alleged in SOR ¶¶ 1.k and 1.m are duplicates. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, the debt alleged in SOR ¶ 1.m is resolved for Applicant.

Applicant's admissions, CBRs, and testimony at the hearing establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions under this guideline 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated 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 numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's marital breakup and periods of unemployment were conditions beyond her control. She has acted responsibly to satisfy the judgment in SOR ¶ 1.g. She has not acted responsibly regarding the other debts.

Her conversations with a former landlord, the electric company in SOR ¶¶ 1.k and 1.m, the collection agency for the credit card debt in in SOR ¶ 1.o, and the satellite television service in SOR ¶ 1.r fall short of significant actions to resolve the debts. She has not contacted the medical creditors in SOR ¶¶ 1.h and 1.i, the collection agency in SOR ¶ 1.l, or cell phone service provider in SOR ¶ 1.n.

AG ¶ 20(c) is not established. Applicant has not sought or received financial counseling.

AG ¶ 20(d) is established for the judgment in SOR ¶ 1.g, but not for the other debts alleged in the SOR.

AG ¶ 20(e) is not established. Although Applicant denies the debt in SOR ¶ 1.r, she has not disputed it with the creditor or the credit reporting agencies.

Guidelines E and J, Personal Conduct and Criminal Conduct

The same conduct is alleged under Guidelines E and J. The concern under Guideline E is set out in AG 15: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." The concern under Guideline J 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 driving record establishes the following disqualifying conditions under Guideline E:

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . a pattern of dishonesty or rule violations.

Her conduct also establishes the following disqualifying conditions under Guideline J:

AG ¶ 31(a): a single serious crime or multiple lesser offenses; and

AG ¶ 31(c): allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted.

AG ¶ 31(g) (“individual is currently on parole or probation”) is not established. Although Applicant is required to install an ignition interlock on any vehicle she drives, she completed her last period of unsupervised probation in September 2014.

The following Guideline E mitigating conditions are potentially applicable:

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

The following Guideline J mitigating conditions also 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, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

AG ¶¶ 17(c) and 32(a) are not established. Applicant's DUI offenses and traffic-related infractions are numerous, recent, and did not occur under circumstances making recurrence unlikely.

AG ¶ 17(d) is not fully established. Applicant has acknowledged her behavior. However, other than the court-mandated ASAP classes and AA attendance imposed in November 2012, she has not received counseling or taken any steps to alleviate the conditions that caused her irresponsible behavior.

AG ¶ 32(d) is not established. Applicant testified that she is continuing her education and has been promoted to a supervisory position at work. She stopped drinking in March 2014. However, she was on probation until September 2014, and she will remain under a requirement for an ignition interlock for 11 more months. She has no support system for maintaining sobriety. She has a long track record of irresponsible behavior. I am not convinced that she will refrain from further irresponsible conduct after the pressure of obtaining a clearance is removed.

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(a):

(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 F, E, and J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant's life fell apart in 2009, when she discovered her husband's infidelity and their marriage broke up. She has encountered substantial periods of unemployment. Her financial problems have been exacerbated by the \$8,000 in fines she has paid for her DUIs and traffic offenses. Although she was candid and sincere at the hearing, her approach to her problems has been unfocused and undisciplined. She does not have a plan for resolving her financial problems. She has a track record of impulsive, undisciplined behavior that is not yet mitigated by the passage of time without further incidents.

After weighing the disqualifying and mitigating conditions under Guidelines F, E, and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her financial problems, personal conduct, and criminal conduct. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n-1.r:	Against Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraphs 2.a-2.g:	Against Applicant
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Paragraph 3, Guideline J (Criminal Conduct): AGAINST APPLICANT

Subparagraph 3.a:	Against Applicant
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Conclusion

I conclude that 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.

LeRoy F. Foreman
Administrative Judge