



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



In the matter of:)
)
) ISCR Case No. 10-10932
)
Applicant for Security Clearance)

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*

09/27/2013

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. The four charged-off or delinquent accounts alleged in the Statement of Reasons (SOR), totaling \$16,500, have been resolved. As have the alcohol consumption, criminal conduct, and personal conduct security concerns. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on December 14, 2012, the DoD issued an SOR detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On January 18, 2013, Applicant answered the SOR and requested a hearing. On May 15, 2013, I was assigned the case. On May 31, 2013, the Defense

¹ 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) effective within the DoD on September 1, 2006.

Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on June 11, 2013. I admitted Government's Exhibits (Ex) 1 through 11 and Applicant's Exhibits A through L, without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. Two character letters (Ex. M and Ex. N) were submitted and admitted into the record without objection. On June 19, 2013, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, Applicant admitted all of the factual allegations in the SOR. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 30-year-old material handler who has worked for a defense contractor since April 2010, and seeks to obtain a security clearance. Applicant's co-workers state: Applicant is the "go to person when the job has to be done right," that she has strong moral values, is very intelligent, dedicated, determined, well organized, efficient, and a trustworthy person. She has a "can do" attitude and a positive energy that is contagious in the work place. (Ex. M, Ex. N)

Applicant was on active duty in the U.S. Air Force from May 2003 through April 2009. From July 2005 to June 2006, she served in Korea. For April 2005, she was the flight's top performer and received a coin from her command chief. (Ex. J, Tr. 35) She also received a certificate of appreciation for her volunteer work. (Ex. K) From June 2006 through April 2008, she served in Italy. She served her last tour in Afghanistan. In January 2009, she received a Joint Service Achievement Medal. (Ex. D, Ex. F) In March 2009, she received a Joint Service Commendation Medal. (Ex. A, Ex. B, Ex. C) In April 2009, she separated from the Air Force as a staff sergeant (E-5).

In September 2007, Applicant had recently been promoted to staff sergeant (E-5), and she purchased a new car. She asked her supervisor for leave to visit her boyfriend in the United States. (Ex. 4, Tr. 31) Before receiving an answer, her supervisor was sent on temporarily duty (TDY) to the NCO Academy. She then asked his replacement for permission to go, to which he said "ok, no problem."

The day before Applicant was to leave, her supervisor called her, and she told him she had an airplane ticket for her trip. He responded that it was alright for her to go and that she should send him an email saying she would be on leave and provide a leave address. He said she should complete the leave request through the normal computer program. At this late date, Applicant is uncertain, but believes the leave web was down or that she submitted her leave request and it did not go through. (Ex. 4)

On September 25, 2007, she left her base in Italy and went to visit her boyfriend, an Air Force recruiter, in the United States. While on leave, her commander sent her boyfriend a message asking where Applicant was. She called her commander who asked her who had authorized her leave. (Tr. 33) She said her supervisor had, but her supervisor said he had not authorized it. (Ex. 4) Her commander told her that now that

he knew where she was, she did not have to immediately return, and they would discuss the matter when she returned to the unit on Monday, three days later. (Ex. 4, Tr. 32) On October 1, 2007, she returned to her unit.

In October 2007, Applicant received non-judicial punishment (NJP) pursuant to Article 15 of the Uniform Code of Military Justice (UCMJ) for a violation of Article 86, Absent Without Leave (AWOL). (Ex. 8) Applicant was reduced in rank to Senior Airman (E-4), was given 15 days extra duty, and given a reprimand. The reduction in grade was suspended through April 9, 2008. She accepted the action, did not appeal her punishment, and moved on. (Tr. 34)

In December 2007, the suspended reduction in grade was vacated, because she had told her supervisor she had a doctor's appointment at 1200 hours, which was not true. Her statement was a violation of Article 107, UCMJ, False Official Statement. (Ex. 9) She took responsibility for her actions. (Tr. 55) She moved to her next assignment, told new commander of the Article 15s, and put the incidents behind her. (Tr. 34) While in her new assignment, she was deployed to Afghanistan and received two medals for her meritorious service there.

In November 2009, after leaving the Air Force, Applicant became involved in an argument with her sister, which escalated to the point where she and her sister struck each other. (Ex. 4) Her sister is five years younger than she and was pregnant at the time. (Tr. 40) The argument involved her sister's disrespect to their mother. (Ex. 2, Tr. 41) It also involved her sister wanting to have an abortion, and what her sister had done to try to self-abort the baby. (Ex. 4) At the time, her sister was suffering from depression. (Tr. 40) Applicant was against abortions and was trying to convince her that abortion was a bad idea. During the incident, her sister bit her finger, which escalated the incident. (Ex. 7)

Applicant realizes it was wrong to strike her sister. (Tr. 41) Applicant was charged with aggravated battery, but the charge was dropped when she apologized to her sister and her sister declined to seek prosecution. (Ex. 2, Ex. 5, Ex. 5) Applicant was not required to return to court. (Ex. 4) The abortion never occurred. She and her sister now have a very good relationship. (Tr. 42) Her sister recently told Applicant that she (her sister) was wrong for wanting to have an abortion and is very happy having her daughter.

In February 2010, Applicant went to a bar with a designated driver, but her friend left early. (Ex. 2, Ex. 4) She was stopped after leaving the bar and arrested for Driving Under the Influence of Alcohol (DUI). (Ex. 6) She pled guilty to DUI and was sentenced to fines and court costs totaling \$3,500, probation for nine months, and to perform 50 hours of community service. (Tr. 59) In November 2010, she successfully completed her probation. (Ex. 4) She satisfactorily completed a one-week DUI class prior to sentencing and has since completed all additional court imposed actions. (Ex. 2) Following the incident, she no longer drinks alcohol. (Ex. 4)

Applicant had three charged-off credit card accounts: SOR 3.a (\$7,251), SOR 3.b (\$2,403), and SOR 3.d (SOR \$2,497). She also owed \$4,425 (SOR 3.c) on her personal military credit card when she left active duty. After leaving the Air Force, she was unemployed from April 2009 until June 2009 and from January 2010 until April 2010, when she obtained her current job. (Ex. 2) She used a credit card (SOR 3.b) to help her meet living expenses while she was unemployed. (Ex.4)

The three credit card debts have now been paid. (Tr. 49) After leaving the military, her income tax refunds were seized for three years to make payment on the personal military credit card (SOR 3.c). (Tr. 60, 71) In April 2011, she used her tax refund to make additional payments on the same account. (Ex. 4) The final amount taken was \$92. (Tr. 71) She is still investigating whether any additional funds are due on this account. (Tr. 49) While unemployed, she lived with her mother to save on expenses and received unemployment compensation. She was unsuccessful in her attempt to obtain a debt consolidation loan from her credit union. (Ex. 4) She has "settled in full" the debts listed in SOR 3.a and 3.d. (Ex. G, Ex. H) The other two debts (SOR 3.b and SOR 3.c) show a zero balance on her June 2013 credit report. (Ex. I) Applicant's current salary is \$57,452, and her expenses are \$2,000 to \$3,000 monthly. (Ex. L, Tr. 50)

Applicant's June 2010 credit report listed five accounts as being 120 days past due and listed twelve accounts as being paid as agreed. (Ex. 10) Her March 2011 credit report listed five accounts as being in collection and twelve accounts being paid as agreed. (Ex. 11)

During Applicant's personal subject interview in August 2010, she informed² the investigator she attempted to answer "yes" to the financial questions on her e-QIP, but the computer program would not allow her to do so due to follow-up questions. (Tr. 63) Whenever she attempted to list a debt or indicate that the debt had been turned over to a collection agency, there was a dropdown box that requested her bankruptcy case number. She did not have a case number because she had not filed for bankruptcy protection. (Ex. 4) She finally gave up on the form, believing she could answer the financial questions during her interview, which she did. (Ex. 4) After completing the e-QIP, she told her supervisor about the problem she experienced completing the form. (Tr. 63)

In June 2010, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). (Ex. 1) In response to a question in Section 13A, Employment/Unemployment Information, she failed to list seven weeks of employment in September and October 2009, when she worked at a woman's clothing and lingerie store. (Tr. 38) The store says she was discharged for failing to adhere to the employer's job expectations. (Tr. 38) She disputes she was fired, asserting she quit due to the store manager belittling people and the manager's disrespectful attitude to employees. (Ex. 4, Tr. 66) Applicant says she and the manager did not get along and she decided to tell the manager what she thought and left. (Tr. 38) She acknowledges that her approach

² Applicant stated that the first thing she did during the interview was to tell the investigator she experienced trouble while completing the questionnaire. (Tr. 64, 65)

was wrong. (Tr. 39) Her transition from military life to civilian employment also played into her actions. (Tr. 37) Coming from the military she found it difficult to accept that a manager would act as she did.

Applicant denies she was fired due to misconduct. (Tr. 38, 66) An investigation (Ex. 3) by the state unemployment office found Applicant had quit her job for personal reasons and her reasons for leaving were not attributable to the employer. (Ex. 3) The state unemployment office did not find she was fired from her employment, but that she had left voluntarily. (Tr. 66) During her personal subject interview she explained what had happened during her short employment with the store. (Ex. 3)

Applicant failed to list her NJP received in October 2007 in response to a question in Section 15, Military History. The question asked if she had been subject to court-martial or other disciplinary proceedings under the UCMJ, to include non-judicial. (Ex. 1) Even though the question asks about non-judicial punishment, she thought she should answer "yes" only if she had gone to court-martial under the UCMJ. (Ex. 4, Tr. 43) Additionally, she thought that if she answered "yes" she would not have been given an opportunity to explain what had happened. (Tr. 44) She now acknowledges she should have answered "yes" to the question. (Tr. 43)

In response to a question in Section 22, Police Record, she failed to list her arrest for striking her sister in November 2009. Because the charges had been dropped and she did not have to go to court over the matter, she thought the matter was ended. Her failure to list the arrest was an oversight. (Ex. 4) She did report her most recent arrest, her February 2010 DUI. In Response to questions in Section 26, Financial Record, she failed to indicate she was more than 90 days delinquent on any debt and had any accounts charged off, which has previously been addressed.

Applicant stated she had a horrific year after she left the Air Force during which she was arrested for striking her sister and DUI. During this same period, she was unemployed and unable to keep up with her bills. After the DUI, she stopped drinking alcohol, went back to school, and obtained her current job. She made the dean's list in school and graduated on time. (Ex. 2) She takes full responsibility for her prior actions. (Ex. 2)

Policies

When evaluating an applicant's suitability for a security clearance, 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 must be considered in evaluating an applicant's eligibility for access to classified information.

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶

2(c), the entire process is a conscientious scrutiny 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 interests of security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security 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 access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “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.”

In February 2010, Applicant was arrested, and she later pleaded guilty to DUI. In November 2009, she got into an argument with her sister that escalated to physical contact. In 2007, while in the Air Force, she received non-judicial punishment for being AWOL and the suspended punishment was vacated when she made a false statement telling her supervisor she had a medical appointment, which was not true. 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,” apply.

Security concerns raised by criminal conduct may be mitigated under AG ¶ 17(c), if “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.” Her 2010 DUI appears to be an isolated incident. She went to a bar with a designated driver. However, she chose to drive home after drinking when she could not locate her designated driver. This was a mistake. She took responsibility for her actions and pleaded guilty to the DUI. She has not been involved in any other misconduct of this nature and has stopped drinking.

In 2009, an argument with Applicant’s sister led to physical contact. A heated argument over disrespect to their mother and abortion fueled the argument. Applicant acknowledges she was wrong and should not have struck her sister. She and her sister are now on good terms. Her sister told Applicant that she was wrong and that it would have been a mistake to abort her daughter. There are no other incidents of battery. This appears to be an isolated and unique event where circumstances led to an argument that became so heated that battery occurred. Applicant should not have struck her sister and her action is not excused by her sister biting her finger. Now that they are on good terms, such conduct is unlikely to repeat itself.

In 2007, Applicant had just been promoted when she wanted to visit her boyfriend. She asked her supervisor for leave, but the leave request was never properly processed. Her commander called her while she was on leave and asked who had approved the leave. She said her supervisor had authorized her leave; however, he did not support his claim when asked. She received non-judicial punishment for her conduct. With her time in the Air Force, she should have known that one cannot go on leave without an approved, signed leave form. But it is unusual for someone who was just recently promoted to take leave without having it properly cleared. The process was made more difficult by her supervisor going TDY and her having to report to a new supervisor in his absence.

The non-judicial punishment was vacated when Applicant told her supervisor she had a doctor’s appointment when she did not. She acknowledged her conduct was wrong. The inappropriate conduct occurred more than five and a half years ago. Since then, her duty performance in the Air Force greatly improved. In 2009, following her non-judicial punishment, she received both a Joint Service Achievement Medal and a Joint Service Commendation Medal for her actions in Afghanistan.

The key question is whether Applicant’s conduct is mitigated by the passage of time. There are no bright line rules for determining when conduct has been mitigated by the passage of time. The determination must be based on a careful evaluation of the totality of the evidence. See ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). 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.” *Id.* Applicant’s last misconduct was more than three and a half years ago, prior to her obtaining her current job. Since then, she has been gainfully employed and is highly thought of by her supervisors and co-workers. They indicate she is the “go to person when the job has to be done right” and has a “can do” attitude with positive energy that is contagious in the work place. AG ¶ 17(c) is established.

Under AG ¶ 17(d), the security concerns raised by criminal conduct also may be mitigated if “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.” There has been no criminal conduct since February 2010. Applicant went back to school, made the dean’s list in school, and graduated on time. She takes full responsibility for her prior actions. She is remorseful, sincere, testified credibly at the hearing, and has a good employment record. AG ¶ 17(d) applies.

Applicant has taken other positive steps to alleviate the stressors, circumstances, or factors that caused the inappropriate behavior, and such behavior is unlikely to recur. She no longer drinks, making another DUI unlikely. Her relationship with her sister has improved and a physical argument is unlikely to recur. She is no longer in the service making it impossible for her to again be punished for being absent without leave. She has learned from her mistakes, matured, and is a responsible member of the community.

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, “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.”

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. 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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent,” applies. In February 2010, Applicant was arrested and later pled guilty to DUI.

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

- (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 good judgment.

The only indication of excessive drinking by Applicant was her 2010 DUI. She was drinking at a bar and attempted to drive home when she could not locate her designated driver. She acknowledged she acted inappropriately. She has since stopped drinking. Without any other incidents of excessive alcohol consumption, this was an isolated incident that occurred more than three years ago. Since she no longer drinks the behavior is unlikely to recur. The incident does not cast doubt on her current reliability, trustworthiness, or good judgment. AG ¶ 23(a) applies.

Guideline F, Financial Considerations

Under the financial considerations guideline a security concern typically exists due to significant unpaid debts. 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 or unethical acts to generate funds to meet financial obligations. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an Applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An Applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The record evidence supports a conclusion that after leaving the Air Force in 2009, Applicant experienced financial problems and was unable to pay her debts in a timely manner. Disqualifying Conditions (DC) AG ¶19 (a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations," apply.

Applicant has the four delinquent accounts listed in the SOR. The disqualifying condition may be mitigated under mitigating condition AG ¶20(a), where "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." She has addressed her past due accounts. AG ¶20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," applies. Her financial problems arose when she transitioned from being on active duty in the Air Force to civilian live. She is now gainfully employed.

I find her financial problems are unlikely to recur. Her current financial state does not raise concerns about her current reliability, trustworthiness, or good judgment.

Under AG ¶20(b) the conduct may be mitigating where “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.” Applicant was unemployed after leaving the Air Force. Her action on her debts showed responsible action.

Evidence that “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” is potentially mitigating under AG ¶20(c). Applicant is current on her debts. She is not receiving calls or letters from creditors. She is not living beyond her means. I conclude this potentially mitigating condition applies.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 provides two conditions that could raise a security concern and may be disqualifying in regard to falsification of Applicant’s security clearance application and other alleged false statements:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

On June 14, 2010, Applicant completed her e-QIP. In response to the question in Section 13A, Employment/Unemployment Information, she failed to list the seven weeks of employment in a clothing store. She left because she could not get along with the manager due to the manager’s disrespectful and belittling attitude.

Applicant denies she was fired for misconduct. The store says she was discharged for failing to adhere to the employer's job expectations. Even if this were true, it is not shown Applicant was involved in misconduct. During a May 2011 interview, she told the investigator that she had worked at the store for a couple of months in 2009, but was not fired. Applicant acknowledges that her approach to the store manager was wrong. The state unemployment office's investigation found Applicant had quit her job for personal reasons and her leaving was not attributable to the employer. In the investigation there was no finding she was fired from her employment, but had left voluntarily.

Applicant failed to list her store employment, but this does not prove she deliberately failed to disclose information and attempted to hide this information from the Government. She has denied intentional falsification. Her statements about her intent or state of mind at the time she executed the e-QIP are relevant and material, but not conclusive. An intent to deceive or mislead the Government does not require direct evidence and can be inferred from circumstantial evidence, but this is not the case here. When her statements are weighted in light of the evidence as a whole, I find her answers about her store employment were not deliberate omissions, concealments, or falsifications.

In 2007, Applicant received non-judicial punishment, which was later vacated. She failed to list that punishment on her e-QIP. The question asked if she had been subject to court-martial or other disciplinary proceedings under the UCMJ to include non-judicial. She should have listed her non-judicial punishment; however, she misinterpreted the question and thought she should answer "yes" only if she had gone to court-martial under the UCMJ. Additionally, she thought that if she answered "yes" she would not have been given an opportunity to explain what had happened. She acknowledges she should have answered "yes" to the question.

In response to a question in Section 22, Police Record, Applicant failed to list her arrest for striking her sister in November 2009. The charges against her were dropped, and she was not required to attend court concerning the matter. She asserts her failure to list the arrest was an oversight. She did, however, report her more recent criminal conduct, her February 2010 DUI.

When Applicant was completing her e-QIP, she attempted to indicate she had debts that had been turned over for collection. However, whenever she attempted to enter a debt she was prompted to provide a bankruptcy case number. She never filed for bankruptcy protection and therefore had no number to provide. She finally gave up trying to enter her delinquent accounts on the form believing she could answer the financial questions during her personal interview. After completing the e-QIP, she told her supervisor about the problem she experienced completing the form. During her interview, the problem she was having entering the debts on the form was the first thing she brought up. She was not attempting to hide her delinquent accounts from the Government, but had difficulty in completing the computer form.

Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. She tried to list her delinquent accounts, but the computer program prevented her from doing so. She did not list her non-judicial punishment while in the service because she read the question to ask about being court-martialed, which did not apply to her. She did not list her 2009 assault charge, which was later dropped; but did list the more recent DUI. She did not list her short period of store employment in 2009. I found Applicant's explanation and her answers to be credible and consistent with the facts. After hearing her testimony, observing her demeanor, and evaluating all the evidence of record, I found her testimony credible on the falsification issue. I am satisfied he did not intentionally falsify her e-QIP or provide false information during her personal subject interview.

Whole-Person Concept

Under the whole-person concept, the 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. The 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. While in the Air Force, Applicant received non-judicial punishment, and the suspended punishment was vacated, but this is balanced against the more recent awards of the Joint Service Achievement Medal and Joint Service Commendation Medal for her duty performance in Afghanistan.

As Applicant stated, she had a horrific year after she left the Air Force during which she was arrested for striking her sister and DUI. After the DUI, she stopped drinking alcohol. It was during this same period, she was unemployed and unable to keep up with her bills. She is now gainfully employed and has paid all of her delinquent accounts. Her 2010 DUI was an isolated incident. Her relationship with her sister has greatly improved and is no longer likely to be the source of conflict. In the past,

whenever Applicant acted inappropriately she took responsibility for her actions, took her punishment, and moved forward. The most recent of her conduct occurred more than three years ago. Since then she had returned to school, attained the dean's list, completed school on time, and is now gainfully employed.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her criminal conduct, personal conduct, alcohol consumption, and financial considerations.

Formal Findings

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

Paragraph 1, Criminal Conduct:	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant
Paragraph 2, Alcohol Consumption:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Financial Considerations:	FOR APPLICANT
Subparagraphs 3.a – 3.d:	For Applicant
Paragraph 4, Personal Conduct:	FOR APPLICANT
Subparagraph 4.a – 4.h:	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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge