



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-12553
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

09/30/2013

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**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, I conclude that Applicant failed to mitigate security concerns under Guideline F, Financial Considerations, and Guideline G, Alcohol Consumption. Her eligibility for a security clearance is denied.

**Statement of the Case**

On July 5, 2011, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On April 5, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations, and Guideline G, Alcohol Consumption. 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) effective within the DOD for SORs issued after September 1, 2006.

Applicant provided a notarized answer to the SOR, which she signed and dated on May 13, 2013. She requested that, in lieu of a hearing, her case be determined on the record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The Government compiled its File of Relevant Material (FORM) on July 16, 2013. The FORM contained documents identified as Items 1 through 8. On July 29, 2013, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on August 7, 2013. Her response was due on September 6, 2013. Applicant did not submit any information in response to the FORM within the required period, and she did not request an extension of time to file information. On September 16, 2013, the case was assigned to me for a decision.

### **Findings of Fact**

The SOR contains 16 allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.p.), and three allegations of disqualifying conduct under Guideline G, Alcohol Consumption (SOR ¶¶ 2.a. through 2.c.). In her Answer to the SOR, Applicant admitted 15 of the Guideline F allegations. She denied the Guideline F allegation at SOR ¶ 1.e. She admitted the three Guideline G allegations. Applicant's admissions are entered as findings of fact. (Item 1; Item 2.)

The facts in this case are established by the record provided by the Government. In addition to Applicant's Answer to the SOR, the record evidence includes Applicant's 2011 e-QIP; her response to DOHA interrogatories;<sup>1</sup> an identification record from the Federal Bureau of Investigation (FBI), dated August 6, 2011; and Applicant's credit reports of August 6, 2011, September 27, 2012, and June 10, 2013. The credit reports establish the debts alleged on the SOR. (See Items 3 through 8.)

Applicant is 29 years old, never married, and has no children. Since January 2011, she has been employed by the government contractor sponsoring her for a security clearance. She seeks a clearance for the first time. (Item 3.)

Applicant began to consume alcohol when she was about 16 years old. From 2000 until at least November 2012, Applicant consumed alcohol at times to intoxication. In 2003, she was arrested and charged with Driving Under the Influence (DUI). She was represented by counsel. She pled guilty to Open Container, was fined, and her driver's license was suspended for six months. This behavior is alleged at SOR ¶¶ 2.b. and 2.c. (Item 4.)

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<sup>1</sup>Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on August 18, 2011. On December 5, 2012, in response to DOHA interrogatories, Applicant signed a notarized statement in which she agreed that the investigator's summary accurately reflected the information she provided in her interview. Additionally, she reported that during her interview she discussed her childhood, her relationship with her mother, her past issues with alcohol, and volunteer and sports activities she took up after attending counseling to learn how to make better decisions. She did not change or modify any facts as reported in the investigator's summary. (Item 4.)

In December 2004, Applicant stopped drinking alcohol when she became involved in a relationship with a man who had a young child. For about five years, Applicant did not drink alcohol. In about 2009, when the relationship began to come to an end, Applicant began going out again with her friends to bars and clubs. She told the authorized investigator that she went out every weekend, drank seven to eight beers, and became intoxicated. (Item 4.)

In September 2010, Applicant realized she was drinking too much, and she resolved to stop consuming alcohol again for a brief period. In December 2010, after resuming the use of alcohol, Applicant was arrested and charged with (1) Driving While Intoxicated - First Offense; (2) Operate Motor Vehicle with 0.08 of 1%; and (3) Refusal. She pled guilty to Driving While Ability Impaired by Alcohol. She was fined and her driver's license was suspended for 90 days. (Item 4; Item 5.)

Applicant does not believe she has an alcohol problem. She continues to drink alcohol on occasion, and she intends to drink alcohol in the future. She reports drinking three to four glasses of wine at a wedding or six to seven beers when at a friend's house. She does not think she should drink alcohol when she is upset or feeling stressed. She states she will not drink and drive in the future. Applicant has not had treatment or supportive counseling due to her use of alcohol. She stated that she increased her sports and physical activities in order to reduce the stress that caused her to drink alcohol. (Item 4.)

From about August 2003 until December 2009, Applicant was enrolled in higher education, first at a community college and later at a state university. She did not, however, earn a degree. She financed her higher education with student loans. In response to DOHA interrogatories, she identified at least \$48,000 in student loan debt. Applicant's credit bureau report of June 10, 2013, shows that Applicant is responsible for \$24,533 in student loan debt in collection status and \$1,007 in student loan payments that are 180 days or more past due. Additionally, the credit report shows student loans valued at \$12,500 in deferred status. (Item 3; Item 4; Item 6.)

Applicant has a history of financial delinquency. When she completed her e-QIP in July 2011, she identified the following delinquent debts: two debts in collection status; a default on an automobile loan and a subsequent repossession; one debt 180 days delinquent; and one debt 90 days past due. (Item 3.)

When Applicant was interviewed by an authorized investigator in August 2011, she discussed the debts she had listed on her e-QIP, expressed her intention to contact two medical creditors to arrange payment, and stated she would seek counsel from a financial planner. She denied knowledge of any other debts. The investigator then brought to her attention 12 additional debts either in collection or past due status. Applicant stated she was unaware of the 12 debts and would obtain a copy of her credit report, contact her creditors, and arrange payment. (Item 4.)

The SOR alleges that Applicant is responsible for four delinquent student loans in collection status. The debts are identified at SOR ¶¶ 1.f. (\$3,765); 1.g. (\$8,778); 1.h. (\$3,054); and 1.i. (\$4,147). The SOR also alleges at ¶ 1.o. that Applicant is responsible for a \$1,261 delinquent debt to an educational institution. (Item 1.)

Additionally, the SOR alleges that Applicant is 180 days past due on two education accounts, one for \$575 (SOR ¶ 1.j.) and one for \$432 (SOR ¶ 1.k.). The SOR also alleges that Applicant is 120 days past due on three other education accounts, identified as SOR ¶¶ 1.m. (\$674); 1.n. (\$985); and 1.p. (\$572). (Item 1.)

Applicant admitted all of her educational debts and acknowledged that they have not been satisfied. In her current job, Applicant earns \$11 an hour in regular pay and \$16.50 an hour in overtime pay. In 2012, her annual gross salary was approximately \$25,000. Her monthly take-home pay is approximately \$1,210. Applicant provided documentation demonstrating that she authorized a deduction of 15 percent of her after-tax income to be allocated to paying her student loans. She provided pay slips showing that in the first eleven months of 2012, she made payments of over \$3,100 on her student loan debts. The record does not specify which student loan debts are subject to Applicant's monthly payments. (Item 3; Item 4.)

Applicant owes medical debts which occurred when she became ill and sought medical assistance. At the time of her illness, she did not have medical insurance. These debts are alleged at SOR ¶¶ 1.a., 1.b., and 1.c. Applicant acknowledged that these medical debts were hers and had not been paid. Her credit bureau reports show these debts as delinquent since 2010. Applicant explained that, after paying her monthly living expenses and student loan repayments, she lacks sufficient income to make any payments on her medical debts. (Item 2; Item 6; Item 7.)

The SOR alleges at ¶ 1.d. that Applicant owes a creditor \$164 on a debt in collection status. Applicant's credit bureau report of June 2013 shows that the debt has been delinquent since January 2010. Applicant acknowledged the debt and claimed she lacks the financial resources to pay the debt. (Item 1; Item 2; Item 6.)

The SOR alleges at ¶ 1.e. that Applicant is at least 150 days past due in paying a utility bill of \$591. Applicant denied the debt and asserted she had paid it in November 2012. She provided documentation showing that her current utility bill with the same creditor was in good status, and that she had made two payments in October 2012 to resolve the delinquency. The debt is listed as unsatisfied on Applicant's credit bureau report of June 2013. (Item 1; Item 4; Item 6.)

In February 2011, Applicant's automobile was repossessed when she failed to make required payments. The debt has been charged off. The SOR alleges at ¶ 1.l. that Applicant owes the automobile creditor \$4,039. Applicant admitted the debt and acknowledged that it had not been satisfied. She stated that she lacked sufficient discretionary income to pay the debt. Applicant failed to provide a current personal financial statement or documentation supporting financial counseling. (Item 2; Item 4.)

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no 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 Applicant’s 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.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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, the administrative judge applies these guidelines 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 national 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 in seeking 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 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 information.

Section 7 of Executive Order 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 F, Financial Considerations**

The security concern relating to the guideline for Financial Considerations 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.

The guideline notes two conditions that could raise security concerns in this case. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns.

The record reflects that Applicant is responsible for 15 long-standing unresolved debts dating to at least 2010. She denied the debt alleged at SOR ¶ 1.e., but she failed to provide documentation to corroborate her assertion that the debt had been satisfied. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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(a)). Additionally, unresolved financial delinquency might be mitigated if “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(b)). Still other mitigating circumstances that might

be applicable include 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” (AG ¶ 20(c)) or “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” (AG ¶ 20(d)). Finally, security concerns related to financial delinquencies might be mitigated if “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(e)).

Applicant has a history of financial delinquency, and her delinquency continues to the present time. She is responsible for debts dating back several years. While she incurred considerable education debt and did not complete her studies by receiving a degree, the record does not reflect that she has experienced reversals beyond her control. She has been steadily employed by her current employer for almost three years. Because she did not provide a personal financial statement listing her sources of income and her monthly expenses, it is not possible to determine whether she has the financial resources to pay or settle her old debts. The take-home pay from her current employment as a government contractor, as listed on two pay slips provided for the record, suggests that she likely has little discretionary income after paying her living expenses.

Applicant merits credit for authorizing the payment of 15% of her after-tax income to reduce some of her student loan debt. However, the record does not specify which of her education debts are affected by the payments and which, if any, remain unaddressed. Moreover, Applicant’s non-educational debts remain unaddressed. She has yet to establish a track record of timely and consistent payment of those delinquencies. Applicant’s unwillingness to address these debts raises concerns about her judgment, reliability, and trustworthiness. I conclude that while AG ¶ 20(d) applies in part to the facts of Applicant’s case, AG ¶¶ 20(a), 20(b), 20(c), and 20(e) do not apply in mitigation to the facts of Applicant’s case.

### **Guideline G, Alcohol Consumption**

Guideline G, Alcohol Consumption, applies in this case to a determination of eligibility for access to classified information. Under Guideline G, “[e]xcessive 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.”

Applicant began to drink alcohol in 2000, when she was a high school student, and she admitted she consumed alcohol to excess and to the point of intoxication from 2000 to at least November 2012. In 2003, she was arrested and charged with DUI, and she pled guilty to Open Container. Her driver’s license was suspended for six months.

Applicant stated that she did not consume alcohol when involved in a relationship with a man who had a young child. When the relationship ended, however, she returned to consuming alcohol, often to intoxication. In September 2010, she

resolved to stop using alcohol, but resumed shortly thereafter and was arrested in December 2010 and charged with Driving While Impaired by Alcohol, a charge to which she pled guilty.

Despite her alcohol-related arrests, Applicant continues to use alcohol. She reports that her consumption includes drinking three to four glasses of wine at a wedding or six to seven beers when at a friend's house. She intends to continue using alcohol in the future. She asserts that she will not operate a motor vehicle after drinking alcohol. She has not been diagnosed as alcohol dependent or as an alcohol abuser.

I have considered all of the Alcohol Consumption Disqualifying Conditions. I conclude that the record evidence in this case raises Guideline G disqualifying conditions at §§ 22(a) and 22(c). AG § 22(a) reads: "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." AG § 22(c) reads: "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent."

The Guideline G disqualifying conduct could be mitigated under AG § 23(a) if "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 disqualifying conduct could also be mitigated under AG § 23(b) if "the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)." If "the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress," then AG § 23(c) might apply. Finally, mitigation might be possible under AG § 23 (d) if "the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program."

Applicant was arrested and charged with alcohol violations in December 2003 and December 2010. Applicant's second alcohol-related incident is recent, and it occurred after many years of excessive consumption of alcohol. Applicant continues to use alcohol and intends to do so in the future. Her current use includes four glasses of wine at a wedding or six to seven beers when at a friend's house. She has not been diagnosed as an alcohol abuser or alcohol dependent, and she has stated that her alcohol use in the future will be responsible. However, she has failed in her resolve to avoid consuming alcohol to excess. Insufficient time has passed for Applicant to



demonstrate that her use of alcohol does not cast doubt on her current reliability, trustworthiness, and good judgment. I conclude that none of the Guideline G mitigating conditions applies in Applicant's case.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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. Applicant has a history of unresolved debt. The record does not include information about her sources of income, her living expenses, and how much discretionary income she has to pay or otherwise resolve her delinquent debts. Her alcohol-related arrests occurred in 2003 and 2010. She denies she has an alcohol problem. She continues to use alcohol, and intends to do so in the future. She acknowledges that her current use can include three or four glasses of wine at a wedding and six or seven beers at a friend's house. Applicant failed to show that she possesses the reliability, judgment, and trustworthiness of a person who can be trusted with classified and sensitive information.

Overall, the record evidence leaves me with serious doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that Applicant failed to mitigate security concerns under Guidelines F and G.

### **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, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.d.:	Against Applicant
Subparagraph 1.e.:	For Applicant
Subparagraphs 1.f. - 1.p.:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a. - 2.c.:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Joan Caton Anthony  
Administrative Judge