



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-01095
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

01/06/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate security concerns raised by her circumstances and past conduct. Clearance is granted.

Statement of the Case

On August 15, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations, personal conduct, alcohol consumption, and criminal conduct guidelines.¹ Applicant answered the SOR and initially requested a decision on the administrative (written) record. She subsequently requested a hearing to establish her eligibility for access to classified information.²

¹ This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

² Applicant's request for a hearing and continued sponsorship for a clearance are attached to the record as Appellate Exhibits (App. Exh.) I and II.

On June 9, 2016, per Applicant's request, a hearing was held to allow her to present evidence, both testimonial and documentary, addressing the security concerns at issue.³ At hearing, Applicant testified and the exhibits offered by the parties were admitted into the administrative record without objection (Exhibits 1 – 8 and A – H). After the hearing, Applicant submitted additional documentary evidence, which were also admitted into the record without objection (Exhibits I – L). The transcript (Tr.) was received on August 12, 2016, and the record closed on November 9, 2016.⁴

Findings of Fact

Applicant is a 35-year-old college graduate, employed as a systems administrator by a federal contractor. She and her husband of 12 years recently separated. She is the primary caretaker of her three minor children, and is not receiving spousal or child support from her husband. She has been with her current employer since 2011, and earns a yearly salary of approximately \$70,000. She has held a security clearance for the past six years. She submitted a security clearance application in 2014, seeking to maintain her eligibility for a clearance

Financial⁵

Applicant started experiencing financial trouble in about 2011. She took an early withdrawal from her 401(k) retirement account and did not set aside a sufficient amount to pay the resulting tax liability. She incurred a sizeable federal income tax debt for the. She entered into an installment agreement with the IRS and presented documentation reflecting monthly payments dating back to June 2011. The IRS documentation also reflects that Applicant withheld far more in taxes than owed in 2014 and 2015, resulting in refunds that were applied against the tax debt. The documentation further reflects that Applicant has reduced her federal tax debt from over \$30,000 to a current balance of less than \$20,000.

Applicant continued experiencing financial problems in 2012, when her husband changed jobs and their income decreased. IRS documentation reflects that from 2011 to 2015, their income declined by nearly \$60,000. Her husband, who ran the family's finances, stopped paying the mortgage and used the money to pay other bills. Months later, Applicant saw a collection notice from the bank and became aware that her husband had stopped paying the mortgage.

³ Prehearing correspondence was marked and attached to the record as App. Exh. III and V. The hearing was originally scheduled for late June, but was twice rescheduled to accommodate Applicant. The case management order (CMO) was marked and attached to the record as App. Exh. IV.

⁴ The original deadline to submit post-hearing matters was September 8, 2016, but at Applicant's request it was extended.

⁵ The pertinent portions of the record relied upon for the information relayed in this section can be located at: Tr. 21-47, 55-60; Exhibits 5 – 8, A – D, I – M.

In the fall of 2012, Applicant and her husband filed a joint Chapter 13 bankruptcy petition to save the family home from foreclosure. They made the \$2,000 monthly bankruptcy plan payments for about six months while continuing to negotiate a loan modification. They voluntarily moved to dismiss the Chapter 13 after the bank agreed to a mortgage modification. The bankruptcy was dismissed in August 2013.

Applicant's marriage deteriorated as her family's financial situation spiraled downward. In approximately November 2015, Applicant and her husband formally separated. Applicant retained the family home, but was unable to afford the monthly mortgage payments and other expenses on her income alone. The bankruptcy documents reflect that Applicant's husband was the primary breadwinner, with a monthly income nearly three times the amount she earns as a federal contractor. Applicant does not receive financial support from her estranged husband. She is the sole source of financial support for the three children.

Applicant got a roommate to help pay the mortgage. She got a second job when the roommate moved out. She submitted documentation reflecting her successful efforts in negotiating a new loan modification and IRS installment agreement. Applicant has responsibly addressed two of the major SOR debts, the mortgage delinquency and federal tax debt referenced in SOR 1.d and 1.n.

Applicant submitted her separation agreement, which corroborates her testimony that her estranged husband is responsible for the car debt and state tax debt referenced in SOR 1.k and 1.o. She presented sufficient evidence to support her dispute regarding these two SOR debts.

Applicant contacted the overdue creditor for the debts referenced in SOR 1.e – 1.i, which total approximately \$4,700. She worked out a monthly payment plan and presented documentation reflecting plan payments. She also presented documentation of having paid the \$1,300 debt referenced in SOR 1.b. She credibly testified about contacting the creditor holding the \$75 medical debt referenced in SOR 1.c and was informed the account had a \$0 balance. She is working with her insurance company to resolve the charged-off amount listed in SOR 1.l for her former car. Applicant addressed the consumer-related debts referenced in SOR 1.b, 1.c, 1.e – 1.i, 1.k, and 1.o. The remaining two SOR debts, which represent charged-off accounts and are listed in SOR 1.j and 1.m, remain unresolved.

Security Clearance Application⁶

Applicant was asked to list any adverse financial information on the 2014 security clearance application (SCA). She reported the 2012 bankruptcy filing and its subsequent dismissal. She did not list each of the delinquent debts delineated in the bankruptcy petition as debts that were over 120 days past-due on the SCA. Shortly after submitting the SCA, Applicant freely discussed her financial situation and past-due debts with a security clearance background investigator. She genuinely believed that by

⁶ Tr. 27-31; Exhibits 1 – 2.

reporting the bankruptcy she had properly responded to the questions in the SCA asking about her financial record. She also was under the mistaken impression the \$10,000 to 12,000 in payments that she and her husband had submitted into the Chapter 13 plan had been used by the bankruptcy trustee to satisfy her delinquent debts, except those tied to her mortgage, taxes, and cars. Applicant credibly testified that she did not intend to deceive or misrepresent to the Government about her financial situation when she submitted her SCA.

*Alcohol-Related Incident*⁷

In March 2015, around the time Applicant and her husband were separating, she was arrested for driving while intoxicated (DWI). She went to a dinner party hosted by several of her girlfriends. She consumed alcohol and then made the poor decision of getting behind the wheel of her car. She hit a mailbox and ended up in a ditch, requiring medical attention. When Applicant's blood alcohol concentration (BAC) was taken, it measured at least three times above the legal limit of .08. She pled guilty and was sentenced to 16-weeks of alcohol counseling. She completed all terms of her sentence, including the mandated alcohol counseling and alcoholics anonymous (AA) attendance. She reported the DWI arrest and subsequent conviction to her security manager.

Applicant was involved in a previous DWI in the 1990s, when she was a teenager. She was going through a tumultuous time, consumed too much alcohol, got behind the wheel of a car, and was involved in a car accident.⁸ The record evidence does not reveal any other criminal conduct, arrests, or convictions, alcohol-related or otherwise. Present and former co-workers submitted letters providing their favorable opinion regarding Applicant's work ethic, reliability, and overall good character.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

⁷ Tr. 49-53; Exhibits 3 – 4, E – H.

⁸ This matter was not alleged in the SOR and is only being considered in assessing Applicant's mitigation case, credibility, and whole-person factors.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative judges are responsible for ensuring that an applicant receives fair notice of the security concerns at issue, has a reasonable opportunity to address those concerns, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

An individual who is granted access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Security clearance decisions include, by necessity, consideration of the possible risk an 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.

Analysis

Financial

The SOR alleges that Applicant’s accumulation of delinquent debt raises the financial considerations security concern, which is explained at 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 financial considerations security concern is not limited to a consideration of whether an applicant with financial problems might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent

to which an applicant's delinquent debts cast doubt upon their judgment, self-control, and other qualities essential to protecting classified information.⁹

Applicant's history of financial problems raises the financial considerations security concern. The record evidence also raises the disqualifying conditions at AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Once disqualifying conditions are established, the burden shifts to an applicant to present evidence demonstrating extenuation or mitigation sufficient to warrant a favorable security clearance decision. ISCR Case No. 15-01208 at 4 (citing Directive ¶ E3.1.15). In the present case, Applicant bears a heavy burden in mitigating the heightened security concerns raised by her accumulation of delinquent tax debt.¹⁰

The adjudicative guidelines provide for conditions that could mitigate security concerns raised by an applicant's circumstances and conduct. Here, the record evidence raised the following mitigating conditions:

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.

⁹ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

¹⁰ See *generally*, ISCR Case No. 14-03358 at 3 (App. Bd. Oct. 9, 2015) (Board explained the heightened security concerns raised by tax-related financial issues, as follows: "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

Applicant's financial problems were initially of her own making. She took an early withdrawal from her 401(k) retirement account without setting aside a sufficient amount to pay the resulting taxes and penalties. However, as evidenced by the IRS documentation, Applicant immediately worked out an installment agreement with the IRS and started to repay her tax debt in June 2011.

Applicant's already strained finances were then negatively impacted by matters beyond her control, notably, her husband's unilateral decision to not pay the mortgage and the sharp decrease in their household income after he decided to switch jobs. Her financial situation was then further damaged by their recent separation and the resulting loss of his income. Applicant again did not sit idly by as her financial situation worsened. Instead, after regaining her financial footing, Applicant took positive action to address her delinquent accounts. She provided documentary proof showing that she addressed and either resolved or is in the process of resolving the mortgage, federal taxes, and other marital debts. Although Applicant's finances are not perfect, she is now living within her means and is resolving her debts as her finances allow. The remaining SOR debts do not undercut the significant efforts she has made since separating from her husband to take control of her finances and satisfy her debts.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present evidence to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to classified information.¹¹ Applicant met her heavy burden of proof and persuasion in mitigating the security concerns raised by her delinquent debts. Specifically, I find that AG ¶¶ 20(a) through 20(e) apply either in whole or in part and when considered with the whole-person factors noted herein mitigate the financial considerations concerns.

Security Clearance Application

The SOR alleges that Applicant deliberately failed to disclose her delinquent debts on her SCA. This falsification allegation raises the security concern under the personal conduct guideline, which is explained at 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. 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.

¹¹ ISCR Case No. 14-03112 (App. Bd. Nov. 3, 2015) at 4 ("a clearance [decision] . . . is only an attempt to predict [an applicant's] possible future behavior and to assess whether, under the compulsion of circumstances or for other reasons, [s/he] might compromise sensitive information.)

It is generally well understood that the security clearance process is contingent upon the honesty of all applicants. An applicant must disclose relevant matters that are responsive to questions on the SCA. However, the omission of material, adverse information standing alone is not enough to establish that an applicant intentionally falsified his or her SCA. An omission is not deliberate if the person genuinely forgot the information requested, inadvertently overlooked or misunderstood the question, or sincerely thought the information did not need to be reported. An administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.¹²

Applicant did not deliberately falsify her SCA when she did not list each of her debts that were over 120 days delinquent. She voluntarily provided the information about her Chapter 13 bankruptcy and genuinely believed that such disclosure was responsive to the relevant SCA questions inquiring about her financial record. Moreover, she fully discussed her troubled financial situation and past-due debts during the security clearance background interviews, which took place shortly after she submitted her SCA. She further demonstrated her honesty and trustworthiness when she reported the DWI to her security manager, notwithstanding the potential adverse impact such disclosure could have on her security clearance eligibility. After considering all the evidence and having an opportunity to observe Applicant's demeanor, I find that she did not intend to hide or mislead the Government about her financial situation when she submitted her SCA. Accordingly, SOR 2.a is found in Applicant's favor.

Alcohol-Related Incident

The SOR further alleges that Applicant's DWI arrest and conviction raises the security concerns under the personal conduct, alcohol consumption, and criminal conduct guidelines. The personal conduct concern is noted above, while the security concerns related to the two other guidelines are addressed at AG ¶¶ 21¹³ and 30.¹⁴

Applicant's DWI raises security concerns under all three alleged security guidelines. Although this is the only alcohol-related incident Applicant has been involved in about 20 years, the presence of several aggravating factors (i.e., high BAC, car accident) raise serious security concerns. The disqualifying conditions at AG ¶¶ 16(c), 22(a), 31(a), and 31(c) apply.

Applicant presented sufficient evidence to mitigate the security concerns raised by her 2015 DWI. At the time, she was going through a significant, life-altering situation, (i.e., marital separation). Although this circumstance does not excuse her conduct, it is an extenuating and mitigating factor. After the incident, Applicant reported the adverse

¹² See *generally* ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005).

¹³ 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.

¹⁴ 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.

information to her security manager. She successfully completed the terms of her sentence, including receiving alcohol counseling and attending AA. Nearly two years have passed without any other similar conduct. The only other alcohol-related incident was a conviction approximately 20 years ago when she was a teenager. After a review of the entire record, I find the 2015 DWI was an aberration that occurred under unique circumstances which are unlikely to be repeated. AG ¶¶ 17(c), 17(d), 23(a), 32(a), and 32(c) apply in whole or in part and together with the whole-person factors present in this case mitigate the security concerns raised by this incident.

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 the relevant circumstances. An administrative judge should consider the non-exclusive factors listed at AG ¶ 2(a). I hereby incorporate my above analysis and highlight some additional whole-person factors.

Applicant's past financial problems and alcohol-related issue were primarily a consequence of the dissolution of an unstable marriage. Even though Applicant continues to work on improving her financial situation and the alcohol-related incident was relatively recent, the evidence reflects favorable and permanent behavioral changes. Of note, is the responsible manner in which Applicant addressed her federal tax debt, delinquent mortgage, and a significant portion of her consumer-related debt, including taking a second job to pay the debts while still the primary custodial parent of three children. Applicant's track record of responsibly addressing her personal financial issues, both self-made and not, raise favorable inferences regarding her current ability and willingness to handle her security responsibilities.¹⁵

Additionally, Applicant self-reported the DWI despite the potential negative ramifications to her continued employment status as a federal contractor, which is dependent on maintaining a clearance. She has held a clearance without issue for the past six years. After considering all the evidence, both favorable and unfavorable, the security concerns raised by Applicant's circumstances and past conduct no longer cause doubts about her present suitability for continued access to classified information.

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 (Drug Involvement):
Subparagraphs 1.a – 1.o:

FOR APPLICANT
For Applicant

¹⁵ ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) ("Security clearance determinations are not an exact science, but rather predicative judgments about a person's security suitability in light of that person's past conduct and present circumstances.") (citing, *Egan*, 484 U.S. at 528-529).

Paragraph 2, Guideline E (Personal Conduct): Subparagraphs 2.a and 2.b:	FOR Applicant For Applicant
Paragraph 3, Guideline G (Alcohol Consumption): Subparagraph 3.a:	FOR APPLICANT For Applicant
Paragraph 4, Guideline J (Criminal Conduct): Subparagraph 4.a:	FOR Applicant For Applicant

Conclusion

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge