



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-01935

Appearances

For Government: William T. O'Neil, Esquire, Department Counsel

For Applicant: *Pro se*

January 26, 2012

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the record, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline E, Personal Conduct, and Guideline G, Alcohol Consumption. Applicant's eligibility for a security clearance is denied.

Statement of Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP), on October 26, 2009. On June 6, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, Personal Conduct, and Guideline G, Alcohol Consumption. DOHA acted under Executive Order 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) effective within the Department of Defense for SORs issued after September 1, 2006.

On July 12, 2011, Applicant answered the SOR in writing and requested that his case be determined on the record in lieu of a hearing. On August 10, 2011, the Government compiled its File of Relevant Material (FORM). The FORM contained documents identified as Items 1 through 13. By letter dated August 18, 2011, 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 FORM on September 7, 2011. His response was due on October 7, 2011. Applicant timely filed six pages of documents in response to the FORM. On October 7, 2011, the case was assigned to me for a decision. I marked Applicant's documents as Item A and admitted them to the record without objection.

Findings of Fact

The SOR contains 11 allegations of disqualifying conduct under Guideline E, Personal Conduct (SOR ¶¶ 1.a. through 1.k.), and 3 allegations of disqualifying conduct under Guideline G, Alcohol Consumption (SOR ¶¶ 2.a. through 2.c.). In his Answer to the SOR, Applicant admitted the all Guideline E allegations, with the exception of the allegation at SOR ¶ 1.h., which he denied. He also admitted two Guideline G allegations (SOR ¶¶ 2.a. and 2.b.). He did not respond specifically to the allegation at SOR ¶ 2.c., which cross-alleged under Guideline G conduct which he had previously admitted under Guideline E. Applicant's admissions are entered as findings of fact. (Item 1; Item 4.)

The facts in this case are established by the record provided in the FORM by the Government and by written information provided by Applicant in response to the FORM. The record evidence includes Applicant's answers to the SOR; his e-QIP, executed and certified on October 26, 2009; his credit bureau report of November 5, 2009; official investigation and agency records; and Applicant's responses to DOHA interrogatories.¹ (See Items 1 through 13; Item A.)

Applicant is 50 years old, divorced, and the father of one adult child. He has been employed since October 2009 as a property management specialist. He seeks a security clearance. (Item 5.)

Applicant enlisted in the United State military in December 1981, and he served for 20 years. He received an honorable discharge in 2001. (Item 5.)

Applicant has a history of violent conduct. He has been arrested and charged three times for assault. In January 2005, he and his female roommate quarreled. Applicant was arrested and charged with assault, third degree. He received probation

¹ Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on December 7, 2009. In response to DOHA interrogatories, Applicant reviewed the investigator's report, made no additions or deletions, and, on January 4, 2011, signed a statement that the investigator's report accurately reflected the information he provided to the investigator at his interview. (Item 7.)

before judgment and was ordered to pay court costs and complete anger management counseling. This conduct is alleged at SOR ¶ 1.a. (Item 1; Item 4; Item 6; Item 8.)

In September 1997, Applicant was charged with one count of assault, 2nd degree, and two counts of deadly weapon. All three counts were placed on the stet docket. This conduct is alleged at SOR ¶ 1.d. (Item 9.)

In November 1982, during his military service, Applicant was charged with aggravated assault. He was tried by special court martial and found not guilty. This conduct is alleged at SOR ¶ 1.h. (Item 11.)

Applicant also has a history of battery and criminal use of weapons. In 1994, Applicant was charged with battery, handgun use in felony violation of a crime, and handgun on person. He received supervised probation before judgment for the battery charge. The handgun charges were *nolle prossed*. This conduct is alleged at SOR ¶ 1.e. (Item 6.)

In November 1991, Applicant was charged with handgun on person. The charge was *nolle prossed*. This conduct is alleged at SOR ¶ 1.f. (Item 6.)

In 1983, while serving in the military, Applicant was charged with wrongful possession of marijuana and wrongful possession of a prohibited drug. He received an Article 15 non-judicial punishment and was sentenced to a reduction in rank, extra duty, and restriction. This conduct is alleged at SOR ¶ 1.g. (Item 12.)

In his December 2009 personal subject interview, Applicant stated that he began to consume alcohol in about 1981. He reported that he drinks to intoxication about twice a week. (Item 6.)

Applicant also has history of driving under the influence of alcohol (DUI). In 1999, he was charged with DUI. Applicant was convicted, sentenced to two years probation, and required to receive six months of mandatory counseling. He was also ordered to pay fines and court costs, and his driver's license was restricted. This conduct was alleged at SOR ¶ 1.c. (Item 6.)

In 2002, Applicant was again arrested and charged with DUI. He was sentenced to four to five weekends in jail and voluntary inpatient treatment. Additionally, his license was restricted for one year and a breathalyzer machine was installed in his vehicle for one year. This conduct is alleged at SOR ¶ 1.a. (Item 6.)

In his personal subject interview, Applicant told an authorized investigator that he had received alcohol treatment after his DUIs. He could not recall the name or place where he received treatment in 1999. In 2004, Applicant received inpatient treatment at a recognized alcohol treatment program. While participating in the program, Applicant was evaluated as alcohol dependent by a licensed counselor and social worker who was a staff member at the treatment program. (Item 7.)

Applicant successfully completed the treatment program in August 2004. In Applicant's counseling discharge summary, his treating counselor strongly recommended that he attend a minimum of four Alcoholics Anonymous (AA) meetings a week, obtain a temporary sponsor within two days of his discharge from the treatment program, and obtain a permanent sponsor within thirty days of his discharge from the program. Applicant was also directed to obtain a home group within one week of discharge from the program. (Item 7.)

Applicant's treating counselor provided the following prognosis:

[Applicant's] chances of sustained abstinence and freedom from addiction are contingent upon his ability to seek and accept help from others while continuing to address past issues that have haunted him. He will do exceptionally well if these issues are addressed in accordance with spiritual growth. His prognosis at this time remains fair pending his ability to incorporate these changes in his life.

(Item 7 at 10.)

On January 4, 2011, Applicant responded to DOHA's interrogatories concerning his police record and his use of alcohol. Applicant answered "Yes" to a question which asked if he had ever received treatment from a drug or alcohol rehabilitation center due to his use of alcohol. He also answered "Yes" to a question asking if he had ever been arrested, charged, or held by any law enforcement authorities for any reason. (Item 7.)

In response to other DOHA interrogatories, Applicant answered "No" when asked if he currently drank alcoholic beverages, intended to drink alcoholic beverages in the future, drank to the point of intoxication, or drank alcoholic beverages immediately before going to work or while at work. He also answered "No" when asked if he had ever reported for work under the influence of alcohol. He answered "No" when asked if he became drowsy, intoxicated, talkative, or belligerent after consuming alcohol. He answered "No" when asked if he was participating in AA or a similar organization to abstain from drinking. He also answered "No" when asked if he took Antabuse to help abstain from drinking. He reported that his last consumption of alcohol occurred on August 12, 2010, when he drank three glasses of beer at a family gathering. (Item 7.)

Applicant's credit bureau report, dated November 5, 2009, listed the following delinquent debts: a judgment for \$300 filed against Applicant in 2007; a medical account for \$400, reported in October 2008, in collection status; a \$2,086 credit card debt, reported in June 2005, in collection status; a \$159 debt to a cable provider, reported in June 2008, in collection status; a \$897 medical debt, reported in October 2005, in collection status; a \$585 debt to a credit card company, reported in April 2009, in collection status; a \$777 debt to a communication provider, reported in September 2009, in collection status; and a \$3,825 debt to a credit card company, reported in September 2009, in collection status. In his December 2009 interview with an

authorized investigator, Applicant stated that he was making payments of \$25 a month on the \$400 medical debt. (Item 13; Item 6.)

Section 22 on the e-QIP that Applicant completed in October 2009 refers to an individual's police record and asks the following: "Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement officer? Have you EVER been charged with any felony offense (Include those under Uniform Code of Military Justice). Have you EVER been charged with any offense(s) related to alcohol or drugs?" Applicant answered "No" the three questions. He did not disclose the facts alleged in SOR ¶¶ 1.a., 1.b., 1.c., 1.e., and 1.g., and the SOR alleges that Applicant's failure to disclose this information was a deliberate falsification of his e-QIP. Applicant admitted that his falsification was deliberate. He provided no credible evidence in mitigation. (Item 1; Item 4; Item 5.)

Section 24 on the e-QIP that Applicant completed in October 2009 refers to an individual's use of alcohol and asks the following: "a. In the last 7 years has your use of alcohol had a negative impact on your work performance, your professional or personal relationships, your finances, or resulted in intervention by law enforcement/public safety personnel? b. In the last 7 years, have you been ordered, advised, or asked to seek counseling or treatment as a result of your use of alcohol? c. In the last 7 years, have you received counseling or treatment as a result of your use of alcohol?" Applicant responded "No" to the three questions posed in Section 24. He did not disclose the facts set forth in SOR ¶¶ 1.b., 2.a. and 2.b., and the SOR alleges that Applicant's failure to disclose this information was a deliberate falsification of his e-QIP. Applicant admitted that his failure to disclose this information was a deliberate falsification. (Item 1; Item 4; Item 5.)

Section 26 on the e-QIP that Applicant completed in October 2009 refers to an individual's financial record and asks the following questions: "c. Have you had a judgment entered against you? g. Have you had bills or debts turned over to a collection agency? m. Have you been 180 days delinquent on any debt(s)? n. Are you currently over 90 days delinquent on any debt(s)?" (Item 5.)

Applicant responded "No" to the four questions under Section 26. He did not disclose the judgment filed against him in 2007, and he did not disclose the seven accounts listed as in collection status on his November 2009 credit bureau report. In SOR ¶ 1.k. DOHA alleged that Applicant deliberately failed to disclose his delinquent debts when he responded to Section 26 on his e-QIP. In his answer to the SOR, Applicant admitted that his failure to disclose this information was a deliberate falsification. (Item 1; Item 4.)

In response to the FORM, Applicant provided documentation showing that the \$585 credit card debt, the cable provider debt of \$159, and the medical debt of \$897 had been paid on Applicant's behalf by a person identified in Applicant's e-QIP as his mother. Applicant also provided documentation establishing that he had satisfied the

\$300 judgment in August 2007 and the balance on the medical account listed on the SOR as totaling \$400. (Item 5; Item A.)

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 an 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 revised 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 as to obtaining 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 E, Personal Conduct

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

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.

Between 1982 and 2005, a period of 23 years, Applicant was arrested and charged with assault three times, DUI twice, battery once, illegal gun use twice, and wrongful possession of marijuana once. In 1999 and in 2002, he was arrested for DUI. Applicant's personal conduct raises security concerns under AG ¶ 16(e)(1), which reads: “personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .” Applicant's multiple arrests for assault, battery, illegal gun use, and wrongful possession of marijuana, if known, could affect his personal or professional standing and cause him to be vulnerable to exploitation, manipulation, or duress.

Three Guideline E mitigating conditions might apply to Applicant personal conduct. 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,” then AG ¶ 17(c) might apply. Additionally, AG ¶ 17(d) might apply in mitigation if “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 occur.” AG ¶ 17(e) might apply if “the

individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.”

Applicant’s past personal conduct that appears on his police record is a serious matter. Even though some of the arrests took place many years ago, and even though the charges were dismissed or *nolle prossed*, they form a pattern of behavior reflecting poor judgment, unreliability, and rule breaking. The fact that many of these actions occurred when Applicant was a mature adult continues to cast doubt on his reliability, trustworthiness, and good judgment. I conclude that AG ¶¶ 17(c), 17(d), and 17(e) do not apply in mitigation.

Between 2005 and 2009, Applicant’s financial delinquencies resulted in several accounts that were 180 days delinquent. At the time he completed his e-QIP in October 2009, Applicant was responsible for several accounts that were over 90 days delinquent. A judgment had been filed against him and seven of his delinquent accounts were in collection status. However, when he completed Section 26 on his e-QIP, Applicant falsified material facts when he answered “No” when asked if he had a judgment entered against him, had debts or bill turned over to a collection agency, had been 180 days delinquent on any debt, or was currently over 90 days delinquent on any debt.

When Applicant completed and certified his e-QIP in October 2009, he falsified material facts about his police record in response to Section 22. He answered “No” when asked if he had been arrested by any police officer or other law enforcement officer, had ever been charged with a felony offense, or had ever been charged with offenses related to alcohol or drugs. In response to Section 24, Applicant answered “No” when asked if, in the last 7 years, his alcohol use had had a negative impact on his work performance, his professional or personal relationships, his finances, or resulted in intervention by law enforcement or public safety personnel. He answered “No” when asked if he had been ordered, advised, or asked to seek counseling or treatment as the result of his alcohol use. He also answered “No” when asked if he had received counseling or treatment as a result of his use of alcohol.

In his answer to the SOR, Applicant admitted that his materially false answers to Sections 22, 24, and 26 on his October 2009 e-QIP were deliberate, thereby raising security concerns under AG ¶ 16(a). AG ¶ 16(a) reads: “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.”

Two Guideline E mitigating conditions might apply. If, “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts,” AG ¶ 17(a) might apply. If an Applicant’s “refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper advice of authorized personnel or legal counsel advising or instructing the

individual specifically concerning the security clearance process” and “[u]pon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully,” then AG ¶ 17(b) might apply. Applicant offered no evidence in mitigation for his falsification of material facts in his response to Sections 22 and 24. In his response to the FORM, Applicant offered, without further explanation, documentation showing that his mother had paid three of the debts alleged on the SOR. He also provided documentation showing that he had satisfied the judgment in 2007 and satisfied in part a medical debt. However, at issue here is not whether Applicant’s financial obligations were satisfied but whether he falsified material facts in response to Section 26 on his e-QIP. In his answer to the SOR, he admitted deliberate falsification in his responses to Section 26. I conclude that no Guideline E mitigating factors apply to Applicant’s deliberate falsifications of his answers to Sections 22, 24, and 26.

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, at times to excess, in 1981. He was arrested and charged with DUI in 1999 and 2002. After his 2002 DUI, Applicant was sentenced to voluntary inpatient treatment for his alcohol consumption problem. During his alcohol treatment, he was evaluated as alcohol dependent. Applicant successfully completed the alcohol treatment in August 2004, and he was released with specific guidance for aftercare. His January 2011 response to DOHA interrogatories revealed that he continues to consume alcohol and no longer participates in AA or other forms of aftercare.

I have considered all of the Alcohol Consumption Disqualifying Conditions. I conclude that Guideline G disqualifying conditions at ¶¶ 22(a), 22(c), and 22(f) apply in Applicant’s case. 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.” AG ¶ 22(f) reads: “relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.”

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."

After completing alcohol treatment and after receiving an evaluation of alcohol dependence, Applicant failed to establish a pattern of abstinence. He continues to consume alcohol and has not continued with aftercare. His continued alcohol consumption under these circumstances raises concerns about his trustworthiness, reliability, and judgment. I have reviewed the facts of Applicant's case carefully, and I conclude that none of the Guideline G mitigating conditions apply.

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 is a mature adult whose military and civilian contractor experience has provided him with knowledge of the security clearance process and its policies. He knows, or should know, of the importance of telling the truth on a security clearance application. Applicant deliberately falsified material facts in response to questions on his e-QIP about his police record,

alcohol use, and financial record. He has a history of using alcohol to excess, and he has been evaluated as alcohol dependent. He continues to consume alcohol, raising serious doubts under the whole-person concept about Applicant's judgment, reliability, trustworthiness, and ability to protect classified information.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his alcohol consumption and personal conduct.

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 E:	AGAINST APPLICANT
Subparagraphs 1.a. - 1. k.:	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.

Joan Caton Anthony
Administrative Judge