



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



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)

ISCR Case No. 19-01248

**Appearances**

For Government:  
Tara Karoian, Esquire, Department Counsel

For Applicant:  
Mark Myers, Esquire  
The Edmunds Law Firm

April 7, 2020

\_\_\_\_\_

**Decision**

\_\_\_\_\_

ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on January 9, 2018. (Government Exhibit 1.) On June 17, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines G (Alcohol Consumption), F (Financial Considerations), and E (Personal Conduct). The actions were taken 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 effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on June 26, 2019, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 29, 2019. The case was assigned to me on October 3, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on October 4, 2019. I convened the hearing as scheduled on November 7, 2019. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits A through C, which were also admitted without objection. Applicant requested that the record remain open for the receipt of additional documentation. No additional information was submitted. DOHA received the transcript of the hearing (Tr.) on November 19, 2019.

### **Findings of Fact**

Applicant was born in Somalia in 1963. He immigrated to the United States in 1984, and became a U.S. citizen in 1992. He has a co-habitant, and one adult child from a prior marriage. Applicant has a high school diploma and some college. He is seeking to obtain national security eligibility in connection with a prospective job as a linguist with the DoD. Applicant is conversant in several languages, but English is not his first language, as shown in the transcript. Applicant admitted all the allegations in the SOR. (Government Exhibit 1 at Sections 9, 12, 13.)

#### **Paragraph 1 (Guideline G: Alcohol Consumption)**

The Government alleged in this paragraph that Applicant is ineligible for clearance because he uses intoxicants to excess. Applicant had a severe alcohol problem for many years. He began drinking in 1982. He began drinking heavily in 1995. (Government Exhibit 3 at 11-12; Tr. at 69.)

Applicant's alcohol problem resulted in several alcohol-related arrests, as set forth below:

1.a. Applicant was first arrested for DUI in April 1997. The available records do not show a disposition. Applicant does not have an accurate recollection of the disposition of this case. (Government Exhibit 3 at 9-10, Exhibit 5 at 5; Tr. at 24-25.)

1.b. Applicant was arrested for DUI a second time in September 1998. The available records do not show a disposition. Applicant does not have an accurate recollection of the disposition of this case. (Government Exhibit 3 at 10, Exhibit 5 at 5; Tr. at 25.)

1.c. Applicant was arrested a third time for DUI in November 2004. He was convicted and sentenced to one day in jail, probation for three years, and a fine. Applicant testified that he completed all the requirements of his sentence. (Government Exhibit 5 at 2; Tr. at 26-27.)

1.d. Applicant was again arrested for DUI in December 2006. The available records do not show a disposition. Applicant believes that this case was either vacated or dismissed. He further stated that he had not been drinking on the date in question. (Government Exhibit 3 at 8, Exhibit 5 at 5; Tr. at 28.)

1.e. Applicant was arrested for Extreme DUI and Failure to Stop at an Accident Scene in January 2007. Applicant did not resolve this arrest in a timely fashion and an arrest warrant was issued. He resolved this case in 2013, along with the offense in allegation 1.h. The sentence included jail for 90 days, probation for three years, a fine, community service and restitution. (Government Exhibit 3 at 9, Exhibit 5 at 5-6; Tr. at 28-30, 37.)

Applicant's driver's license was also suspended for two years as a result of this case and 1.h. At the end of that time, approximately 2015, Applicant had to have an ignition interlock device installed in his car. The device was originally supposed to be in his car for three years. However, due to two incidents involving Applicant and his vehicle, the time was extended by an additional two years. The device was still on his car at the time of the hearing. Applicant has a current driver's license, which was reviewed by this administrative judge, confirming that Applicant was restricted to driving vehicles with an interlock device. (Tr. at 46-52, 71-73.)

1.f. Applicant was again arrested for DUI in March 2008. The available records do not show a disposition. Applicant does not have an accurate recollection of the disposition of this case. (Government Exhibit 5 at 3; Tr. at 30.)

1.g. Applicant was arrested for Disorderly Conduct While Intoxicated in April 2008. The records show he was convicted and paid a fine. (Government Exhibit 3 at 10, Exhibit 5 at 3; Tr. at 30-31.)

1.h. Applicant was arrested for extreme DUI in February 2010. He failed to appear and a warrant was issued. Applicant testified that he found out about the warrants in this case and allegation 1.e in 2013, at that time he went to court and resolved both cases. The sentence included jail for 90 days, probation for three years, a fine, community service and restitution. (Government Exhibit 3 at 10-11, Exhibit 5 at 6; Tr. at 31-37.)

According to Applicant, the 2010 arrest for extreme DUI occurred because he was having an epileptic seizure after drinking. He testified that police took him to the hospital, where he was diagnosed with diabetes. At that time Applicant did not know he was suffering from diabetes. Because of his diabetes diagnosis, Applicant made the decision to stop drinking alcohol for health reasons. As of the date of the hearing he had not had

anything to drink in approximately nine years. He submitted a laboratory report dated October 18, 2019. That report stated Applicant had no alcohol in his system, and that he had diabetic levels of blood sugar. (Government Exhibit 3 at 10-11; Applicant Exhibit C; Tr. at 32-33, 37-39.)

## **Paragraph 2 (Guideline F: Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has failed to meet his financial obligations and is therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

Applicant admitted that he did not file his 2013, 2014, 2015, and 2016 Federal and state income tax returns in a timely fashion. He submitted documentation showing that the subject tax returns were all filed in 2018. (Government Exhibit 2; Applicant Exhibits A and B.)

For many years Applicant has owned a small business in the United States. According to Applicant he was unable to complete his tax returns in a timely manner because of the actions of his business partner, who did not provide timely information to Applicant. In addition, Applicant was making a minimal income in the United States during those years and he wrongfully believed he did not need to file a tax return. Applicant is in the midst of closing down the partnership so as to avoid any future problems. (Tr. 39-42, 44, 52-65.)

In addition to operating his state-side business, Applicant was living and working outside the United States during 2014, 2015, and 2017. That fact made it difficult for him to communicate with his business partner and his tax preparer. In 2018 Applicant decided it was time to file all of his missing tax returns. (Government Exhibit 1 at Section 11, Exhibit 4.)

Available records show that Applicant's 2017 tax returns were filed, albeit late. In addition, as of the date of the hearing, Applicant had yet to file his 2018 income tax returns. He was uncertain of the status of those tax returns, and was unable to provide a time frame in which they would be filed. (Tr. 43-44.)

## **Paragraph 3 (Guideline E: Personal Conduct)**

The Government alleges in this paragraph that Applicant has engaged in conduct that shows questionable judgment, untrustworthiness, unreliability, dishonesty, and an unwillingness to comply with rules and regulations.

Allegation 3.a states that Applicant's conduct under paragraphs 1 and 2 of the SOR are cognizable under this paragraph as well.

Allegation 3.b concerns an arrest of Applicant in December 2010 for Driving with a Forged or Counterfeit Driver's License, Driving While License Suspended, and No Vehicle Registration. He was convicted and sentenced to three days in jail and probation for three years. Applicant was stopped by police and presented his brother's driver's license, since Applicant's driving privileges had been suspended. Applicant admitted that he had been driving on an occasional basis during the time his license had been suspended. He stopped this conduct in approximately 2013. (Government Exhibit 3 at 12, Exhibit 5 at 3-4; Tr. 45-46, 65-69.)

## **Policies**

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

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Paragraph 1 (Guideline G: Alcohol Consumption)**

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

The guideline at AG ¶ 22 contains seven disqualifying conditions that could raise a security concern and may be disqualifying. Two conditions possibly apply to the facts in this case:

- (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 the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and
  
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

Applicant had a long history of drinking to excess, as shown by the eight alcohol-related incidents set forth in the SOR and discussed above. The last incident was in February 2010. Applicant stopped drinking at that time. Both of the cited conditions apply.

The guideline at AG ¶ 23 contains two 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 judgment; and

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Both of the mitigating conditions apply to this case. There is no doubt Applicant had a severe alcohol problem for many years. However, his last alcohol-related arrest was in 2010. He stopped using alcohol in 2010 because of health issues, and credibly testified that he has not had anything to drink since that time. Nine years of sobriety is sufficient to show that Applicant has mitigated the security significance of his prior alcohol issues. Paragraph 1 is found for Applicant.

## **Paragraph 2 (Guideline F: Financial Considerations)**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes several conditions that could raise security concerns and may be disqualifying in this case:

(c) a history of not meeting financial obligations; and

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay Federal, state, or local income tax as required.

Applicant failed to file Federal or state income tax returns, as required, for tax years 2013, 2014, 2015, and 2016. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes several conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's failure to timely file tax returns:

(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;

(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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant was dilatory in filing tax returns for tax years 2013 through 2016. All the returns referenced in the SOR were filed in 2018, before the pendency of this case. I have considered the fact that Applicant's 2018 tax returns had not been filed as of the date of the hearing. Under the particular facts of this case, including his business partnership and the fact that the other returns have all been filed, I find that fact to be of minimal concern. Mitigating conditions ¶¶ 20 (a), (b), and (g) apply. Paragraph 2 is found for Applicant.

### **Paragraph 3 (Guideline E: Personal Conduct)**

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which reads in pertinent part:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes several conditions that could raise security concerns and may be disqualifying in this case:

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



characteristics indicating that the individual may not properly safeguard classified or sensitive information;

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

(1) untrustworthy, or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant's history of alcohol abuse, his failure to file tax returns for several years, and his presenting false identification to law enforcement officers, all amounts to wrongful personal conduct. The burden then shifts to Applicant to overcome these allegations.

AG ¶17 sets forth the possible mitigating conditions. Two apply to the facts in this case:

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

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant had a history of inappropriate alcohol-related behavior for several years, ending in 2010. In addition, he also misrepresented himself to a police officer in 2010. Finally, he did not file his tax returns in a timely fashion. However, Applicant has been working diligently at improving himself. He has not had anything to drink for over nine years, all of the subject tax returns have been filed, and he credibly testified that he understands the importance of continued obedience to all laws going forward. Both of the mitigating conditions apply. Paragraph 3 is found for Applicant.

### **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(d):

(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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has mitigated the security significance of his alcohol-related incidents, failure to file tax returns, and other incidents of concern. Enough time has passed to establish confidence that recurrence is unlikely. Overall, the record evidence does not create substantial doubt as to Applicant's present suitability for national security eligibility for a security clearance.

### **Formal Findings**

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

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraphs 1.a through 1.h:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a and 3.b:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge