



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-03904  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

05/19/2021

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the personal conduct and alcohol consumption security concerns, but he did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 30, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct), F (financial considerations), and G (alcohol consumption). Applicant responded to the SOR on May 15, 2020, and requested a hearing before an administrative judge.

The case was assigned to me on April 5, 2021. The hearing was convened as scheduled on April 28, 2021. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection.

## Findings of Fact

Applicant is a 41-year-old employee of a defense contractor. He has worked for his current employer since August 2017. He submitted documents attesting to his superior job performance during that period. He is applying for a security clearance for the first time. He has about three and a half years of college in pursuit of a bachelor's degree. He has never married, but he has lived with his girlfriend since about 2008. He does not have any children. (Transcript (Tr.) at 17, 29-30, 43; GE 1; AE A-C)

Applicant has a history of alcohol-related criminal offenses. He was detained for being drunk in public in 2005. The police held him in jail overnight and released him the next day without charges. He was arrested in June 2005 and charged with driving under the influence (DUI). He pleaded guilty to a reduced charge of wet reckless. He attended several alcohol courses. (Tr. at 23-24; Applicant's response to SOR; GE 1, 2, 6)

Applicant was arrested in October 2009 and charged with DUI; DUI with a blood alcohol concentration (BAC) of .08 or more; and DUI with a BAC of .15 to .20. He pleaded guilty to a reduced charge of reckless driving, and the other charges were dismissed. He was sentenced to jail for one day (presumably with credit for time served for the day he was arrested), a fine, and alcohol counseling. (Tr. at 24-27; Applicant's response to SOR; GE 1, 2, 6)

Applicant was gambling and drinking at a casino in about June 2017. He lost about \$500. He saw a slot machine with about \$100 credit on it. He waited about 15 minutes, but there was no indication that anyone was playing the machine. He cashed out the \$100. When he visited the casino about two weeks later, he was confronted by the casino's security personnel. He was eventually charged with theft. He paid the \$100 back, hired a lawyer, pleaded not guilty, and was prepared to fight the charge with the defense that the property had been abandoned, but the judge dismissed the charge without a trial. (Tr. at 18-22; Applicant's response to SOR; GE 1, 2, 7)

Applicant admitted that he drank and gambled too much for a period. He stated that he significantly cut back on his drinking after he quit the moving industry and started working more stable jobs in about 2015, with his current job starting in August 2017. His coworkers are more professional than his previous associates. He has not been arrested or charged with anything since the 2017 theft charge. (Tr. at 13-14-17, 27-28, 41, 44-45; GE 2)

Applicant's gambling adversely affected his finances. He used his credit and attempted to win enough to help him with his finances, but the exact opposite occurred as his losses exacerbated the problem. He estimated that he lost \$2,500 from about March 2017 to June 2017. (Tr. at 30-31; Applicant's response to SOR; GE 2)

Applicant reported his criminal issues on his August 2017 Questionnaire for National Security Positions (SF 86). In response to financial questions, he wrote: "I am trying to pay off my credit card and personal loan. Just have been a little pushed back with attorney fees and rent." A September 2017 credit report listed that he had a

defaulted student loan in collection, with a balance of \$20,473. It also reported two accounts with a credit union: a credit card account that was current with a \$16,425 balance; and a loan that was opened in April 2017, was \$107 past due, and had a \$7,349 balance. (GE 1, 3)

A credit report from January 2019 listed that the balance of Applicant's defaulted student loan had been reduced to \$14,139. Both credit union accounts were reported as past due: the credit card account was \$1,499 past due with a \$15,275 balance; and the loan was \$923 past due with a \$6,916 balance. (GE 4)

The SOR alleges the two delinquent credit union accounts. A credit report from October 2020 listed both accounts as charged off, with balances of \$15,270 and \$7,004. That credit report listed Applicant's student loan as current with a balance of \$9,900. (GE 5)

Applicant stated that he concentrated on paying his student loans, and that he paid more than \$10,000 towards them since 2017. The credit reports corroborate that assertion. He has not made any recent payments toward the credit union accounts. He stated that he planned to contact the credit union in an attempt to resolve the debts, either through settlement or a payment plan. He has not received financial counseling. He rarely goes to the casino, and if he does, he does not take more money than he can afford to lose. (Tr. at 14, 30-43; GE 3-5)

## **Policies**

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the 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 national security eligibility will be resolved in favor of the national security.”

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 for financial considerations is set out in AG ¶ 18:

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 personnel 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations;
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and
- (i) concealing gambling losses, family conflict, or other problems caused by gambling.

Applicant has a history of financial problems, including two delinquent credit union accounts. His gambling, funded by his credit, adversely affected his finances. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

Applicant's gambling appears to be under control, and concerns about his gambling are mitigated. He is commended for paying his student loan, but it was at the expense of his credit union accounts. He has not made any recent payments toward those debts. He stated that he planned to contact the credit union in an attempt to resolve the debts, either through settlement or a payment plan. However, intentions to resolve debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted

responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant's delinquent debts are not mitigated.

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

The security concern 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 notes several conditions that could raise security concerns under AG ¶ 22. The following is potentially applicable 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.

Applicant has multiple alcohol-related offenses, including being drunk in public, DUI, and theft while he was drinking. AG ¶ 22(a) is applicable.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

(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.

Applicant asserted that he significantly cut back on his drinking after he quit the moving industry in about 2015. He has not had an alcohol-related driving offense since 2009. The incident in the casino is an outlier, and that was almost four years ago. I find that additional alcohol-related incidents are unlikely to recur. His alcohol consumption does not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 23(a) is applicable.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect

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

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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; 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.

The alcohol-related criminal conduct under Guideline G and the gambling issues under Guideline F are cross-alleged under Guideline E. That conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(d) 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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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

The discussion above under Guidelines F and G applies equally here. I find that the alcohol-related criminal conduct under Guideline G and the gambling issues under Guideline F are unlikely to recur; the conduct does not cast doubt on Applicant's current reliability, trustworthiness, and good judgment; and it no longer serves as a basis for coercion, exploitation, or duress. AG ¶¶ 17(c), 17(d), and 17(e) are applicable

### **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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines E, F, and G in my whole-person analysis. I also considered Applicant's favorable employment record at his current job. However, that is insufficient to overcome his failure to address his delinquent debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the personal conduct and alcohol consumption security concerns, but he did not mitigate the financial considerations security concerns.

### **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.b:	Against Applicant
Subparagraphs 1.c:	For Applicant
Paragraph 2, Guideline G:	For Applicant
Subparagraphs 2.a-2.d:	For Applicant



Paragraph 3, Guideline E: For Applicant

Subparagraph 3.a: For Applicant

**Conclusion**

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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Edward W. Loughran  
Administrative Judge