



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 20-01103
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole Smith, Esq., Department Counsel
For Applicant: *Pro se*

09/17/2021

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines G (Alcohol Consumption) and F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 11, 2016. On October 22, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines G and F. The CAF acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR in an undated document and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January

28, 2021. Scheduling of the hearing was delayed by safety concerns raised by the COVID-19 pandemic. The case was assigned to me on June 2, 2021. On June 9, 2021, I notified Applicant that his hearing was scheduled to be conducted by video teleconference on July 8, 2021, at 2:00 p.m. (Hearing Exhibit I.) On June 24, 2021, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a hearing notice setting out the details of the video teleconference. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until July 31, 2021, to enable him to submit additional documentary evidence. He timely submitted AX B through H. (AX H duplicates AX A.) DOHA received the transcript (Tr.) on July 19, 2021.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.b, 1.c, 1.e, and 2.a-2.l. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Background Information

Applicant is a 53-year-old senior military analyst employed by various federal contractors since August 2008. He has worked for his current employer since April 2019. (Tr. 16.) He received a security clearance in April 2008.

Applicant served on active duty in the U.S. Navy from September 1986 to September 1994 and from July 1996 to July 2008. He retired as a chief petty officer (pay grade E-7).

Applicant married in February 1984, divorced in July 2008, married in August 2012, and separated in July 2020. He and his wife intend to divorce. (Tr. 15.) He has a 20-year-old son child and three stepchildren, ages 21, 18, and 15. He earned an associate's degree in 2019. (Tr. 17.)

Alcohol Consumption (SOR ¶¶ 1.a-1.3)

In March 1990, Applicant was charged with driving under the influence and reckless driving. During an interview with a security investigator in October 2017, he told the investigator that he had consumed 4-5 beers and that he failed a field sobriety test after he was stopped by police. He was convicted of reckless driving, fined, and required to complete an alcohol safety action program. (GX 2 at 13.)

In 2013, Applicant found himself in a stressful marriage, living with a teenager, a preteen, and his mother-in-law. He started to increase his alcohol consumption to a couple of 16-ounce cans of beer and a half pint of alcohol every other day, and then his alcohol consumption "got out of hand." (Tr. 22, 38-39.) He began drinking 4-6 beers daily, with a slight increase on weekends. (GX 2 at 2.)

In June 2014, Applicant sought help from a psychiatrist at a Department of Veterans Affairs (VA) hospital. He told the psychiatrist that he was consuming ten or more drinks four or more times per week, and that he used alcohol to help him sleep. In June 2014, the psychiatrist diagnosed him with an anxiety disorder, alcohol dependence, and nicotine dependence. The psychiatrist prescribed Naltrexone for his alcohol dependence.

Applicant testified that he disagreed with the VA psychiatrist's diagnosis of alcohol dependence, because he needed help coping with stress and not help with controlling his alcohol consumption. (Tr. 22-23.) Starting in June 2014, he abstained from alcohol for about 18 months while using the Naltrexone. He testified that he stopped drinking because he wanted to and not because he had to. (Tr. 21.) In 2016, he resumed social alcohol consumption, limiting his consumption to one or two beers, and then he stopped drinking again from early 2018 until the end of 2019. (Tr. 29.)

In January 2020, Applicant had a violent confrontation with an intoxicated friend. After the incident, he felt threatened by his former friend and started to carry a firearm with him at home. Applicant's wife was concerned about his behavior and asked him to leave their home for two-weeks.

Later in January 2020, Applicant met with his primary-care physician. During this visit, he told the physician that his wife had asked him to leave the home, and that he felt stressed because his wife did not respect him. (Tr. 30.) He told the physician that he usually consumed one or two beers four times a week. However, he also disclosed that he had consumed 28 drinks during the preceding week and had five incidents of binge drinking during the preceding month. His physician advised him to abstain from alcohol. (Tr. 34; GX 4 at 3-4, 8.)

At the hearing, Applicant admitted that he continued to drink beer "or something" at social occasions, notwithstanding his physician's advice to abstain from alcohol. He prefers non-alcoholic beer, and he described his present alcohol consumption as "minimal." He does not believe he has an alcohol problem. (Tr. 37-38.)

In February 2020, Applicant consulted with a VA psychiatrist regarding issues unrelated to alcohol use and was prescribed an anti-anxiety medication. The psychiatrist advised him to avoid using alcohol or other drugs while taking the anti-anxiety medication. (GX 4 at 4.) Applicant testified that he did not consume alcohol while taking the anti-anxiety medication. (Tr. 44.) He continued to visit the psychiatrist on a monthly basis until June 2020. (Tr. 35.)

In March 2020, Applicant was evaluated by a psychologist at the CAF's request. He was diagnosed with a generalized anxiety disorder and moderate alcohol-use disorder. The psychologist noted that Applicant's current alcohol use (about eight beers per week) was not above the guidelines for use of alcohol, but that he also had five recent incidents of binge drinking and had exhibited poor judgment by carrying a firearm at home. She noted that Applicant was compliant with his medication programs and enjoyed previous therapy. Her prognosis was "somewhat guarded given that he does not currently

acknowledge that his use of alcohol has been problematic.” She concluded that Applicant’s continued use of alcohol “could potentially pose a significant risk to his judgment, reliability or trustworthiness concerning classified information and that “the risk to judgment and reliability of any future mental health and substance use problems is moderate as long as he continues to use alcohol.” (GX 4 at 8.)

Financial Considerations—Federal and State Income Taxes (SOR ¶¶ 2.a-2.i)

Applicant’s SCA reflects that he had two periods of unemployment from October 2008 to February 2009 and from February to December 2015. Both occurred when his employers were unable to obtain or retain government contracts. (GX 1 at 11-15.)

During an interview with a security investigator in October 2017, Applicant voluntarily disclosed that he had not filed his federal and state income tax returns for tax years 2014, 2015, and 2016. He did not file his returns because he could not afford to pay the amounts he believed owed for federal and state taxes. (GX 2 at 15.)

In response to DOHA interrogatories in May 2020, Applicant submitted federal income tax transcripts reflecting that he had not timely filed his federal returns for tax years 2012 through 2019. (GX 2 at 27-34.) In his narrative response to the inquiries, he stated that he had filed his federal returns for tax years 2012 through 2019; that he owed nothing for tax years 2012 through 2014; and that he owed \$87 for 2015; \$5,032 for 2016; \$176 for 2017; and \$2,520 for 2018. He did not indicate whether he thought he owed taxes for 2019. He did not respond to the question asking whether he had filed his state tax returns for the same years, but he disclosed that he owed \$619 for 2017; \$1,076 for 2018; and \$1,080 for 2019. (GX 2 at 3-4.)

In Applicant’s answer to the SOR, he stated that he had filed all his federal and state tax returns. In his post-hearing submission, he provided documentary evidence that that his state tax debts for 2017 and 2018 were paid in full in February 2021, and his state tax debt for 2019 was paid in full in March 2021. (AX C.) He requested a federal tax transcript for 2017, but the IRS advised him that it could not provide it at that time, apparently because of an unresolved identity-theft issue. (AX D.) The federal tax transcripts for 2018 and 2019 reflect that the returns for those years were both received on November 23, 2020, and that Applicant owed \$2,520 for 2018 and \$2,358 for 2019. (AX E; AX F.)

In March 2021, Applicant hired a tax-resolution service to assist him in resolving his federal tax debt. (Tr.45; AX G) As of the date the record closed, Applicant had not yet negotiated a payment plan for the past-due federal income taxes.

Financial Considerations—Consumer Debts

SOR ¶ 2.j. A credit report from April 2020 reflects a military credit-card account referred for collection of \$6,003. The account was opened in November 1993 and became delinquent in September 2018. (GX 5 at 2.) Applicant admitted the debt in his answer to

the SOR and submitted a printout of an email reflecting a payment plan initiated in November 2020 and providing for monthly \$400 payments. (AX B at 4-6.) He provided no evidence that he had made any of the agreed payments.

SOR ¶ 2.k. The April 2020 credit report reflects a collection account for \$261. (GX 5 at 3.) In his post-hearing submission, Appellant submitted documentary evidence that the debt was resolved in July 2021. (AX B at 1.)

SOR ¶ 2.I. The April 2020 credit report reflects a deficiency after repossession of an automobile charged off for \$11,562. The last payment was in September 2014. The credit report reflects that the debt is disputed. At the hearing, Applicant admitted that the automobile was repossessed after he was 20 days late on a payment. (Tr. 52-53.) He disputed the debt because the lender would not give him an opportunity to make the late payment and recover the automobile. (Tr. 57.) The debt is not resolved.

Policies

“[N]o 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 applicants 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 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline G, Alcohol Consumption

The SOR alleges that Applicant consumed alcohol, at times in excess and to the point of intoxication from about 1986 until at least January 2020 (SOR ¶ 1.a); that in about March 2020, he was charged with driving under the influence and convicted of reckless driving (SOR ¶ 1.b); that in about June 2014, he was diagnosed with alcohol dependence and prescribed Naltrexone (SOR ¶ 1.c); that in about February 2020, a psychiatrist advised him to not take drugs or alcohol while taking a prescribed medication and that he continued to consume alcohol (SOR ¶ 1.d); and that in about March 2020, a psychologist diagnosed him with a moderate alcohol-use disorder and gave him a “guarded prognosis” (SOR ¶ 1.e)

The security concern under this guideline 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.” Applicant’s admissions and the evidence submitted at the hearing are sufficient to establish the allegations in SOR ¶¶ 1.a-1.c and 1.e. The evidence does not establish the allegation in SOR ¶ 1.d, because it shows that Applicant complied with the medical advice to abstain from alcohol while taking an anti-anxiety medication.

The following disqualifying conditions under this guideline are relevant:

AG ¶ 22(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;

AG ¶ 22(c): habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

AG ¶ 22(d): diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;

AG ¶ 22(e): the failure to follow treatment advice once diagnosed; and

AG ¶ 22(f): alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

AG ¶ 22(a) is established. Applicant's arrest for driving under the influence is sufficient to establish this disqualifying condition, even though he was found guilty of a lesser offense.

AG ¶ 22(c) is established. The evidence establishes that Applicant began to drink heavily in 2013 and 2014 during a period of marital stress, and the medical evaluation in March 2020 noted five recent episodes of binge drinking in a month.

AG ¶ 22(d) is established. Applicant was diagnosed with an alcohol-use disorder in June 2014 and again in March 2020.

AG ¶ 22(e) is established. Applicant abstained while taking Naltrexone in 2014-2015. He complied with medical advice to abstain from alcohol while taking an anti-anxiety drug in 2020. However, his primary-care physician advised him to abstain from alcohol in January 2020, and he has not followed that advice.

AG ¶ 22(f) is established. Applicant was diagnosed with an alcohol-use disorder in June 2014, and he indulged in five episodes of binge drinking shortly before his mental evaluation in March 2020.

The following mitigating conditions are potentially applicable.

AG ¶ 23(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;

AG ¶ 23(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; and

AG ¶ 23(d): the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

AG ¶ 23(a) is not established. Applicant's maladaptive alcohol use was frequent and did not occur under circumstances making recurrence unlikely. Although he is no longer in a stressful marriage, his use of alcohol to relieve stress in other circumstances is not unlikely. His last maladaptive alcohol use was in early 2020, about 18 months ago, but I am not convinced that sufficient time has passed to mitigate his conduct, because he continues to consume alcohol, contrary to his physician's advice, and he adamantly denies that he has an alcohol problem.

AG ¶ 23(b) is not established. Applicant has not acknowledged that he has an alcohol-related problem. He regularly consults with a psychiatrist to deal with his anxiety disorder, but he has not followed his primary-care physician's advice to abstain from alcohol.

AG ¶ 23(d) is not established. Applicant has received counseling and advice concerning his alcohol use, but he has not followed the medical advice to abstain from alcohol.

Financial Considerations

The SOR alleges that Applicant failed to file, as required, federal income tax returns for 2012 through 2018 (SOR ¶ 2.a); that he failed to file state income tax returns for 2014 through 2018 (SOR ¶ 2.b); that he is indebted to the federal government for various amounts for federal income taxes (SOR ¶¶ 2.c-2.f); and that he is indebted to the state government for various amounts for state income taxes (SOR ¶¶ 2.g-2.i). It also alleges a credit-card account placed for collection (SOR ¶ 2.j); an unspecified collection account (SOR ¶ 2.k); and a charged-off deficiency on an automobile repossession (SOR ¶ 2.j).

The security concern under this guideline 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The following mitigating conditions are potentially applicable:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

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; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's financial delinquencies are numerous, ongoing, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant's periods of unemployment and recent marital breakup were conditions largely beyond his control. However, he has not acted responsibly. He did not begin to address his tax delinquencies and his delinquent consumer debts until he was confronted with them and realized that his security clearance was in jeopardy. An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017).

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling. He recently hired a tax-resolution service to assist him in resolving his federal tax debt, but the debt is unresolved.

AG ¶ 20(d) is not established. Applicant did not act to resolve the debts in SOR ¶ 2.j and 2.k until he knew his security clearance was in jeopardy. He submitted no evidence of compliance with the payment agreement he made in November 2020 for the debt alleged in SOR ¶ 2.j. He has taken no action to resolve the debt in SOR ¶ 2.i.

AG ¶ 20(e) is not established. Applicant disputed the debt alleged in SOR ¶ 2.i, but he articulated no reasonable basis for the dispute. He admitted that he was 20 days late on a payment and the lender exercised the right of repossession.

AG ¶ 20(g) is established for the state tax debt. Applicant has filed his past-due federal returns, but he has not yet begun to resolve his federal tax debt. Furthermore, his eventual compliance with his tax obligations does not end the inquiry. A security clearance adjudication is not a tax-enforcement procedure. It is an evaluation of an individual's judgment, reliability, and trustworthiness. The fact that Applicant has filed his past-due returns does not preclude careful consideration of his longstanding prior behavior evidencing irresponsibility. ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014).

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines G and F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's 20 years of honorable service in the U.S. Navy and his long service as an employee of defense contractors. Nevertheless, after weighing the disqualifying and mitigating conditions under Guidelines G and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his alcohol consumption, failure to comply with federal and state tax laws, and delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline G, Alcohol Consumption:	AGAINST APPLICANT
Subparagraphs 1.a-1.c and 1.e:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 2.a-2.i:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge