



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



In the matter of:)	
-----)	
)	ISCR Case No. 19-01656
)	
Applicant for Security Clearance)	

Appearances

For Government:
Andrew H. Henderson, Esquire, Department Counsel

For Applicant:
Pro se

January 14, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on September 16, 2015. (Item 2.) On June 12, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations), J (Criminal Conduct), G (Alcohol Consumption), and E (Personal Conduct). The action was 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 January 2, 2021, with explanations and allied documents, and requested his case be decided on the written record in lieu of a hearing. (Item 1.) In his Answer he admitted all the allegations in the SOR, with the exception of allegations 1.f, 1.h, 3.a, 4.a, and 4.b, which he denied. On March 18, 2021, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 13, was provided to Applicant, who received the file on April 2, 2021.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information on April 23, 2021. Department Counsel stated he had no objection and the additional information is marked and admitted into evidence as Applicant Exhibit A. The case was assigned to me on July 18, 2021. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is granted.

Findings of Fact

Applicant is 46 years old and divorced with one child. He has an associate's degree. Applicant has been employed by a defense contractor since 2015 and seeks to obtain national security eligibility and a security clearance in connection with his employment. (Item 2 at Sections 12, 13A, and 17; Item 3.)

Paragraph 1 (Guideline F, Financial Considerations)

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

The SOR alleged that Applicant had eight past-due debts, including tax debts and mortgage foreclosures, totaling approximately \$202,650. Applicant denied allegations 1.f and 1.h. The existence and amounts of these debts is supported by credit reports dated October 29, 2015; April 9, 2019; and March 16, 2021. (Items 7, 8, and 9.) Applicant stated that most of his financial problems were connected to his divorce in 2013. (Answer; Item 3; Applicant Exhibit A.)

The current status of the allegations in the SOR is as follows:

1.a. Applicant admitted that he owed the Federal Government through the Internal Revenue Service (IRS) \$20,405 for unpaid taxes. Applicant and his wife were divorced in 2013. As part of the divorce agreement Applicant was required to liquidate an IRA and pay his ex-wife half. He provided \$18,000 to his ex-wife and used other monies for personal expenses. The debt consists primarily of taxes and penalties for early withdrawal from the IRA. Applicant submitted an Installment Agreement Request to the IRS

proposing to pay them \$283 a month towards this debt. Applicant submitted copies of 15 money orders that were sent to the IRS on a monthly basis starting in January 2020. All but one of them are in the amount of \$285. The last one, dated April 15, 2021, is for \$200. Applicant had not received notification from the IRS that they have accepted his proposal as of the date of Applicant Exhibit A. Applicant is making a good-faith effort to resolve this debt. (Item 3 at 2, 7-9, 22; Item 10 at 16-17; Applicant Exhibit A at 2-4, 23-27.)

1.b. Applicant admitted that he had a mortgage foreclosed on in 2014 in the amount of \$136,500. Applicant bought the subject house with his then-wife. After the divorce he could not maintain the payments on one salary and attempted to refinance or sell the property. He was unsuccessful and lost the house in foreclosure. (Item 3 at 10-11, Applicant Exhibit A at 3-4.)

1.c. Applicant admitted that he had a second mortgage charged off in approximately 2014 in the amount of \$34,743. This was in relation to the first mortgage discussed in 1.b, above. Applicant stated that his ex-wife refused to help pay any debt. He stated in his Answer, "I was financially incapable (sic) of paying on my own salary. I did have lawyers fees and child support that were present at the time as well." (Item 3 at 10-11; Applicant Exhibit A at 3-4.)

1.d. Applicant admitted owing a charged-off credit card debt in the amount of \$9,652. This credit card debt arose during his marriage. He stated in his Answer that he is amenable to paying this debt, but there is no evidence that he has entered into any payment arrangement with this creditor. This debt is not resolved.

1.e. Applicant admitted that he owed a charged-off commercial debt in the amount of \$1,032. This credit card debt arose during his marriage. He stated in his Answer that his ex-wife was responsible for the debt, but she refused to pay it. He is amenable to paying this debt, but there is no evidence that he has entered into any payment arrangement with this creditor. This debt is not resolved.

1.f. Applicant denied owing a charged-off credit card debt in the amount of \$471. He stated in his Answer that he paid this debt. This debt does not appear in the most recent credit report in the record, dated March 16, 2021. (Item 9.) Based on the available information, I cannot find that Applicant currently owes this debt. This allegation is found for Applicant.

1.g. Applicant admitted that he owed a charged-off wireless telephone debt in the amount of \$207. This debt arose during his marriage. He stated in his Answer that his ex-wife was responsible for the debt, but she refuses to pay it. He is amenable to paying this debt, but there is no evidence that he has entered into any payment arrangement with this creditor. This debt is not resolved.

1.h. Applicant denied that he had a foreclosure in about July 2016. Applicant stated that the person involved in this foreclosure is his father, who has the same name but a different Social Security number. Documentation in the record confirms that the property involved in this foreclosure actually belonged to Applicant's father and his wife. (Item 11; Item 12; Applicant Exhibit A at 6-7.) This allegation is found for Applicant because the debt is not his.

Three credit reports were submitted by the Government (Items 7, 8, and 9). The credit reports show that Applicant's financial condition is good other than the debts in the SOR. Applicant has stated that he is current with his payments to the IRS and his child support. (Applicant Exhibit A at 3-4.) His tax return documentation shows that his salary has been steadily increasing over the years he has been employed with his current employer. (Item 10.)

Paragraph 2 (Guideline J, Criminal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in criminal conduct that creates doubt about a person's judgment, reliability, and trustworthiness. Applicant admitted both allegations under this paragraph.

2.a. Applicant was arrested in March 2014 and charged with seven offenses related to his driving under the influence of alcohol. He plead guilty to Driving Under the Influence of Liquor/Drugs/Vapors and was sentenced to five days' confinement, unsupervised probation for one year, fined \$2,300, and required to attend alcohol awareness classes. Applicant submitted evidence showing that he had completely paid his fine and successfully completed the classes for this offense. Applicant was fired from his job with his state's Department of Corrections due to this arrest and conviction. (Item 3 at 13-14, 21; Item 5; Applicant Exhibit A at 4, 12, 13, 15, 18, 20, and 21.)

2.b. Applicant was arrested in July 2016 and charged with four offenses related to his driving under the influence of alcohol. He plead guilty to Driving Under the Influence of Liquor/Drugs/Vapors and was sentenced to confinement for one day, 90 days of home confinement, unsupervised probation for two years, fined \$3,475, 30 hours of community service, and required to attend 24 sessions of substance abuse treatment. Applicant submitted evidence showing that he had completely paid his fine, and successfully completed the required treatment sessions for this offense as well as his community service. (Item 3 at 19-20, 28; Item 6; Applicant Exhibit A at 5, 11, 14, 16, 17, and 19.)

Paragraph 3 (Guideline G, Alcohol Consumption)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he consumes intoxicants to excess. Subparagraph 3.a stated that the

information set forth under subparagraphs 2.a and 2.b, above, are also cognizable under this paragraph. Applicant denied the single allegation under this guideline.

Applicant admitted the facts of the two alcohol-related arrests described under Paragraph 2. He has consistently stated that he has not drunk alcohol since his last arrest in July 2016, a period of more than five years. In addition to the court-ordered counseling in regard to his two DUI arrests, he has also obtained counseling through his employer's employee assistance program. That counselor submitted a letter to Applicant's attorney on September 9, 2016. He stated that Applicant "has never denied his alcohol use and comes with a positive attitude." The counselor also stated, "He [Applicant] has made excellent progress in acquiring personal insights and better ways to cope with stress in his life." (Item 3 at 4-6, 9, 14; Applicant Exhibit A at 9.)

Paragraph 4 (Guideline E, Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has falsified material facts during the clearance screening process. Applicant denied both allegations under this paragraph.

In January 1991, when Applicant was 15 years old, he was charged with conspiracy to transport marijuana. He got involved in a conspiracy with two other juveniles and one adult. Applicant was charged because he did not inform police of the plot. He plead guilty as a juvenile and received one-year probation, which he successfully completed. The record is silent as to whether this conviction occurred in Federal or state court. The only evidence as to the existence of this conviction is that provided by Applicant in his interview and written statements. (Item 3 at 20-21.)

Applicant did not admit this arrest and conviction on his September 2015 e-QIP (SOR 4.a) or when questioned by an authorized investigator of the Department of Defense in June 2017 (SOR 4.b). He only discussed the conspiracy charge with the investigator in 2017 after an initial denial.

In his Answer Applicant said with regard to allegation 4.a, "I believe I misunderstood if i had to mention anything about charges as a minor or under the age of 18. My intention was never to hide anything."

Applicant discussed his interview answers as follows in his Answer, "I did not know I had to discuss juvenile record because the application did not say charges of a juvenile or under the age of 18."

Applicant further explained his reasoning in Applicant Exhibit A:

I want to clarify I did not try to omit any information about my juvenile record. I was misinformed about my juvenile record. I was told [by] my attorneys

that once I turned 18 my case would be expunged. Furthermore my juvenile case has never been an issue while working in law enforcement. I've believed I've provided all other pertaining information and never tried to hide any information whether good or bad. (Applicant Exhibit A at 5.)

Policies

When evaluating an applicant's suitability for national security eligibility, 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 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 three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (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 annual Federal, state, or local income tax as required.

Applicant had two mortgages foreclosed upon in approximately 2014. He owed approximately \$24,500 to the IRS for back taxes and penalties. In addition, he owed three other creditors approximately \$10,891 for past-due debts as of the date the SOR was issued. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

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

All the debts alleged in the SOR, including the tax debt, were related to Applicant's divorce from his wife in 2013. He could not afford to pay the mortgages on his salary, so the house went into foreclosure. He had to liquidate a retirement account, with the subsequent tax debt, and the consumer debts arose during the marriage. Considering those basic facts, we turn to the question of whether Applicant has acted responsibly in resolving the debts, even though he has not paid any of the consumer debts as of yet. I find that he has. Applicant has been paying the IRS \$285 a month for well over a year, an amount of over \$4,000. He also has consistently been making his child-support payments. The credit reports show no new past-due indebtedness. His tax returns show a steadily increasing salary, which will allow him to continue to pay the IRS, his child support obligation, and resolve the consumer debts in a responsible fashion. All four of the mitigating conditions have application in this case.

In support of these findings, I cite the Appeal Board's decision in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) for the proposition that the adjudicative guidelines do not require that an applicant be debt-free. The Board's guidance for adjudications in cases such as this is the following:

. . . an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the

reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Given his resources, Applicant has initiated a pragmatic approach to the repayment of his IRS debt and has taken significant steps to resolve that debt. Applicant has the knowledge and ability that will allow him to resolve his other debts and stay on a proper financial footing. He has fully mitigated all the allegations in the SOR. Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline J, Criminal Conduct)

The security concerns relating to the guideline for criminal conduct are set out in AG ¶ 30, which states:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes two conditions that could raise security concerns and may be disqualifying in this case:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant had two alcohol-related arrests in convictions in 2014 and 2016. Both of the above disqualifying conditions have application in this case.

The guideline includes four conditions in AG ¶ 32 that could mitigate the security concerns arising from Applicant's alleged criminal conduct. Two have possible application to the facts of this case:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and

does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's last arrest occurred in 2016, five years ago. There is no evidence of any further criminal conduct. He submitted considerable documentary evidence showing that he attended all required classes and treatment sessions. He also submitted evidence showing that he had paid his fines and completed his community service. Both of the mitigating conditions have application to this case. Paragraph 2 is found for Applicant.

Paragraph 3 (Guideline G, Alcohol Consumption)

The security concerns relating to the guideline for alcohol consumption are set out in AG ¶ 21, which states:

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.

AG ¶ 22 describes one condition that could raise security concerns and may be disqualifying 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.

The guideline includes two conditions in AG ¶ 23 that could mitigate the security concerns arising from Applicant's alcohol consumption:

(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.

As stated under Paragraph 2, Applicant has abstained from any alcohol use for over five years. In addition to court-ordered education and treatment, he used his company's employee assistance program to obtain additional counseling about alcohol and how to avoid such incidents in the future. The conduct is unlikely to recur given what he has learned and the resources he has available. Applicant has mitigated this security concern in full and Paragraph 3 is found for him.

Paragraph 4 (Guideline E, Personal Conduct)

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

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 two conditions that could raise security concerns and may be disqualifying in this case:

(a) 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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information, or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in or making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant was arrested and subsequently convicted of conspiracy to transport marijuana when he was a juvenile. He did not report these facts on his e-QIP or when originally interviewed by a government investigator. The above disqualifying condition has application to this case.

The guideline includes three conditions in AG ¶ 17 that could mitigate the security concerns arising from Applicant's alleged falsification:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(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.

Applicant was told by his lawyers in 1991 that his drug case would be expunged when he turned 18. After being informed by the investigator of the need to discuss the offense Applicant cooperated. With regard to the e-QIP it is clear that Applicant looked for an instruction saying he had to report juvenile offenses. He did not find it. Applicant's belief that he did not have to report the arrest, while erroneous, was not an attempt to conceal the arrest. Given that Applicant was otherwise truthful regarding more current criminal offenses I find that he did not have the requisite intent to deceive when he filled out the e-QIP or originally denied the offense to the investigator. Paragraph 4 is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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

concerns regarding his financial situation, past alcohol use and related criminal conduct, and his alleged falsification. He has minimized the potential for pressure, coercion, or duress, as well as the likelihood of recurrence. Overall, the record evidence does not create substantial doubt as to Applicant's present suitability for national security eligibility and 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 F:	FOR APPLICANT
Subparagraphs 1.a through 1.h:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant
Paragraph 3: Guideline G:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4: Guideline E:	FOR APPLICANT
Subparagraphs 4.a and 4.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