



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-00407
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Adrienne M. Driskill, Esquire, Department Counsel

For Applicant:  
*Pro se*

October 17, 2022

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

**Statement of the Case**

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on June 12, 2020. On April 13, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations), J (Criminal Conduct), and G (Alcohol Consumption). This 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 (AG) effective within the Department of Defense (DoD) after June 8, 2017.

Applicant answered the SOR in a written response (Answer) on April 26, 2022, and requested a hearing before an administrative judge. The case was assigned to me on July 26, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on August 10, 2022, scheduling the hearing for September 19, 2022. The case was heard as scheduled.

At the hearing the Government offered six exhibits marked as Government Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits (AE) A and B. I marked the three documents he attached to the Answer as AE C through E. All of Applicant's exhibits were admitted without objection. I kept the record open to provide Applicant the opportunity to submit additional documentation. On September 26, 2022, he provided three additional documents, which I marked as AE F through H and admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 26, 2022. (Tr. at 9-19.)

### **Findings of Fact**

Applicant is 50 years old, has never married, and has no children. He cohabitated with a woman (the Cohabitant) from 2004 until September 2020. He currently lives with a new girlfriend. He has a high school diploma and has taken college courses over several years, but has not yet earned a degree. He enlisted in the U.S. Navy in 1994 and served until 2002 when he was honorably discharged. He then entered the Navy Reserve for two years. He was honorably discharged from the Reserve in 2004. When he served in the Navy he held a Top Secret security clearance for a period and then a Secret clearance. He has also held a Secret clearance while working as a defense contractor. He has worked as an analyst for his current employer since 2007. He seeks to retain national security eligibility and a security clearance in connection with his employment. (Tr. at 20-28; GE 1 at 7-12, 18-19, 29-31.)

### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleged in this paragraph that Applicant is ineligible for clearance because he is financially overextended and has failed to pay his Federal taxes and to timely file his Federal and state income tax returns. The Government alleged that these facts render Applicant potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. The SOR lists five allegedly past-due consumer debts that have been referred to collection or charged off. The total amount of these debts is \$32,755. The SOR also alleged three years of delinquent Federal tax debts in the total amount of about \$5,500 for tax years (TYs) 2018, 2019, and 2020. Lastly, the SOR alleged that Applicant failed to timely file his Federal and state income tax returns for 2019 and 2020. In his Answer, Applicant admitted all of the allegations under this guideline except one (SOR 1.e), which is a debt he asserted he had paid. He also wrote that he paid SOR debt 1.d and his delinquent Federal taxes and that he has filed his Federal and state tax returns for TYs 2019 and 2020. (Answer at 1-2.)

The current status of the matters alleged in paragraph 1 of the SOR is as follows:

1.a. Credit union credit-card account charged off in the amount of \$15,244. Applicant defaulted on paying the monthly payments in 2018 during a period of financial distress. He has made calls to the credit union about this debt and the debts owed to the same credit union listed in subparagraphs 1.b and 1.c, but he has not taken any significant steps to repay this debt. He intends to do what is necessary to take care of these three debts. The debt alleged in subparagraph 1.a is not resolved. (Tr. at 28-31, 68; GE 2 at 4; GE 3 at 2; GE 4 at 5.)

1.b. Credit union credit-card account charged off in the approximate amount of \$9,356. Applicant defaulted on paying the monthly payments in 2018 during a period of financial distress. He has not taken any significant steps to repay this debt. This debt is not resolved. (Tr. at 28-31; GE 2 at 3; GE 3 at 2; GE 4 at 5.)

1.c. Credit union debt-consolidation loan account charged off in the approximate amount of \$7,961. Applicant defaulted on paying the monthly loan payments in 2019 during a period of financial distress. He has not taken any significant steps to repay this debt. This debt is not resolved. (Tr. at 28-33; GE 2 at 2; GE 3 at 2; GE 4 at 5.)

1.d. Medical collection account in the approximate amount of \$150. Applicant paid this debt over the phone in May 2022. This debt has been resolved. (Tr. at 34-35; GE 3 at 3; GE 4 at 6.)

1.e. Communication service provider account in collection in the approximate amount of \$44. This account became delinquent after Applicant prepared his e-QIP. Applicant paid this debt in January 2021. This debt has been resolved. (Tr. at 35-36; GE 3 at 3.)

1.f. Delinquent Federal tax debt for TY 2018 in the approximate amount of \$2,475. This tax debt and the debts alleged in SOR 1.g and 1.h were the result of Applicant under-withholding taxes on his income and changes in the tax law. Applicant resolved this tax debt with a credit from a prior tax year and a payment in March 2022 of \$572. This debt has been resolved. (Tr. at 37-44; AE G at 1-2.)

1.g. Delinquent Federal tax debt for TY 2019 in the approximate amount of \$2,313. Applicant resolved this tax debt with payments in April and September 2022. This debt has been resolved. (Tr. at 37-44; AE B; AE H at 1-2.)

1.h. Delinquent Federal tax debt for TY 2020 in the approximate amount of \$728. Applicant resolved this tax debt with payments in March and September 2022. This debt has been resolved. (Tr. at 37-44; AE B; AE F at 1-2.)

1.i. Failure to timely file Federal and state tax returns in TYs 2019 and 2020. Applicant blamed his failure to file his tax returns on time for these two years on his

financial problems at that time. The Cohabitant was not able to contribute any significant funds to the couple's expenses and those expenses fell mostly on Applicant. He was overwhelmed. He filed his TY 2019 returns on September 12, 2022 and his TY 2020 returns on August 29, 2022. (Tr. at 46-48; AE F; AE H.)

Applicant testified that he experienced financial problems due to poor money management and to the financial demands made by the Cohabitant. He bought a house and was having difficulties paying his bills because he was living beyond his means. The Cohabitant lost her job and had to take a lower paying job. She was also on disability for one year after being diagnosed as bipolar. He had tax problems due to an early withdrawal from his retirement account in 2017. In 2020 he borrowed money from his 401k to pay his 2017 tax debt that resulted from the early withdrawal from his 401k account. The IRS was threatening to impose a lien on his house at that time. Later in 2020 he sold the house and received about \$100,000 of net proceeds from the sale. He gave the Cohabitant \$40,000, even though the house was in his name. He was unable to provide an explanation as to why he did not resolve his other debts with the remaining sales proceeds. He said that with the sale of the house in which he lived with the Cohabitant and the end of that relationship, he just "took a break." He is trying to get his life back together following the end of that long-term relationship in 2019 and 2020. His life has improved since he separated from the Cohabitant. (Tr. at 21-30, 33, 36-41.)

Applicant filed his TY 2021 tax returns about a week before the hearing. He did not file for extensions so the returns were untimely. That fact was not alleged in the SOR because the delinquencies post-date the SOR. He owed the Federal Government about \$4,500 for TY 2021. He recently mailed a check to the IRS to pay that tax debt. (Tr. at 45-48.)

Applicant presently has about \$22,000 in savings. His monthly take home pay is about \$4,000. He recently moved in with a new girlfriend, who has a significant salary. He contributes \$700 to their living expenses and she pays the rest. He owns his car. He has about \$3,000 of net disposable income after expenses. He can afford a payment plan with the credit union if it was willing to accept one. He has not explored that possibility yet. He recognizes that he has to change his tax withholding to make sure he covers his yearly tax obligations. He has not done so or taken other necessary actions on his finances because he "hit a wall" in the 2017-2019 period and is just starting to recover with the help and support of his new girlfriend. He said, "I just had some really bad years." He claims that he used to be financially responsible. At one point since 2018, he sought the help of a debt relief company to assist him to pay and resolve his debts, but he rejected their proposal. He has not received any financial counseling. (Tr. at 51-53, 69.)

## **Paragraph 2 (Guideline J, Criminal Conduct)**

The details regarding the single SOR allegation set forth in paragraph 2 are as follows:

2.a September 2020 arrest and charge of Driving Under the Influence of alcohol (DUI). Applicant had a minor accident when he failed to navigate a turn properly near his home after staying up all night. Earlier in the evening, he had been drinking alcohol. When he was driving home, he felt that he was more tired than intoxicated. The sheriff was called. Applicant registered a 0.10% blood alcohol content even though he had not had a drink in several hours. He was arrested and charged with DUI. He was convicted of the offense of Wet and Reckless. The court sentenced Applicant to one year of probation. He successfully completed all of the terms of his probation, and it expired in May 2022. He also completed all of the state DMV requirements to maintain his driver's license. Applicant is very aware that the consequences of a second similar offense in his state will be much more severe. This was his first DUI arrest, and he has not had any similar arrests since September 2020. At this point he rarely drinks to excess. He has a couple of glasses of wine two nights a week with his new girlfriend. He does not drink and drive. He describes his 2020 accident and arrest as "isolated." He has never been diagnosed with alcohol use disorder. (Tr. at 54-61; GE 5.)

## **Paragraph 3 (Guideline G, Alcohol Consumption)**

The Government cross alleged its Guideline J allegation in a single allegation under the guideline regarding Alcohol Consumption. See the discussion under that guideline, above.

### **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 returns as required.

As of the date of the SOR, Applicant owed approximately \$32,500 for three past-due debts. The record evidence also established that he failed to file his TYs 2019 and 2020 Federal and state income tax returns as required. These facts establish the foregoing potentially disqualifying conditions and shift the burden to Applicant to mitigate the security concerns raised under this guideline.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's 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;
- (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;
- (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.

None of the above mitigating conditions have been fully established. The behavior is recent and Applicant's continued indebtedness to the credit union on three significant debts has not been addressed even though he has the sufficient savings and net monthly

income to do so. Applicant's failure to address these debts over several years casts doubt on his reliability, trustworthiness, and judgment. The circumstances of the Cohabitant's loss of income and the end of Applicant's relationship with her are circumstances beyond Applicant's control. His failure to resolve his credit union debts and his failure to file his tax returns in a timely manner, however, evidences that he did not act responsibly under the circumstances since the end of that relationship in 2020. Applicant has not received credit counseling and there are no clear indications that his financial problems are being resolved or are under control. His payments of two small debts and his tax debts for TYs 2018 through 2020, all of which occurred after the SOR was issued, does not constitute a good-faith effort to repay his overdue creditors. Also he has taken no good-faith actions to repay the debts owed to the credit union. Lastly, Applicant's payment of his past-due taxes and his filing of his tax returns provide some mitigation, but the fact that the returns were filed just a few weeks before the hearing significantly undercuts the extent of that mitigation. Paragraph 1 is found against Applicant.

### **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's one conviction for Wet and Reckless does not constitute "a pattern of minor offenses." The facts in this case do not meet the threshold requirement under this disqualifying condition of multiple minor offenses. AG ¶ 31(a) is not established. However, AG ¶ 31(b) is established by the Applicant's arrest and conviction for excessive drinking and driving. This evidence shifts the burden to Applicant to mitigate the security concerns raised under this guideline.



The guideline includes two conditions in AG ¶ 32 that could mitigate the security concerns arising from Applicant's criminal conduct:

(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 has established both of the above mitigating conditions. While it was relatively recent, Applicant's single offense was also isolated, and the circumstances under which it occurred were unusual and unlikely to recur. Applicant no longer drinks and drives because he knows that the penalties for a second DUI offense would be severe and would negatively impact his life. This offense does not cast doubt on Applicant's reliability, trustworthiness, or good judgment. Also, there is evidence of successful rehabilitation. Two years have passed since Applicant's DUI arrest and there has been no further criminal conduct. He fully complied with the terms of his probation, and he is no longer on probation. He has a good employment record, as evidenced by his 15-year work history with his current employer. 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.

The following potentially disqualifying condition under AG ¶ 22 applies to the facts of 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's one arrest for DUI and his conviction for Wet and Reckless does not establish the above potentially disqualifying condition, which by its terms requires more

than one incident. The Government has not met its burden to establish a security concern under Guideline G arising from this single DUI arrest. Paragraph 3 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 facts established under the guidelines alleged in the SOR and the whole-person concept. I have considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F, J, and G in my whole-person analysis. Further comments are warranted. Applicant's lack of effort to resolve his three debts with the credit union even after he received the SOR in April 2022 and his filing of his tax returns for TYs 2019 and 2020 just a few weeks before the hearing reflects a serious lack of effort to address the Government's security concerns. The fact that he did not file his TY 2021 return in a timely manner and has not adjusted his Federal tax withholding to avoid future tax debts reflects that he has not changed his ways and committed to take his tax obligations seriously. Overall, the record evidence leaves me with questions and doubts as to Applicant's 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant
Subparagraphs 1.d through 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline G:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

## Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON  
Administrative Judge