



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



In the matter of:)
)
) ISCR Case No. 21-00813
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

09/19/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations, alcohol consumption, and criminal conduct security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 4, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations), G (alcohol consumption), and J (criminal conduct). Applicant responded to the SOR on July 8, 2021, and requested a hearing before an administrative judge. The case was assigned to me on June 9, 2022.

The hearing was convened as scheduled on June 27, 2022. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through H, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE I through L and admitted without objection.

Findings of Fact

Applicant is a 30-year-old prospective employee of a defense contractor. He will be hired if he obtains a security clearance. He has a bachelor's degree earned in 2015 and additional post-graduate classes in pursuit of a master's degree. He married in 2014 and divorced in 2017. He and his ex-wife have a child together, and he has a child with his fiancée. (Transcript (Tr.) at 9, 20-21, 26-28, 63; GE 1; AE H)

Applicant was arrested in 2015 and charged with driving while intoxicated (DWI) and felony grand larceny-auto theft. He pleaded guilty to DWI and the lesser misdemeanor charge of unauthorized use of a vehicle. He was sentenced to 12 months in jail, with 11 months suspended for the unauthorized use of a vehicle charge. For the DWI charge, he was sentenced to 60 days in jail, with 55 days suspended; probation for 12 months; a fine; and court costs. His driver's license was restricted, and he was required to attend alcohol education classes. (Tr. at 25-26; Applicant's response to SOR; GE 1, 3, 4)

Applicant admitted that he was drunk when he was arrested. He stated that he drove a short distance from a bar to a 7-11 that was next to an IHOP. He left his car running at the 7-11 with an open alcoholic beverage inside that was left by his cousin. He was arrested as he was coming out of the IHOP. He fit the race and general description of someone who took a mall officer's vehicle at the mall close to where the bar was located. Applicant does not think that he took the mall officer's car because Applicant's car was at the 7-11 next to the IHOP running, so he does not understand how he could have driven both cars, but he blacked out and does not remember, so he cannot completely rule it out. He accepted a plea bargain on the case because he did not want to risk the greater consequences, and he knew that he was very drunk and should not have been driving. (Tr. at 45-48; GE 1, 3)

Applicant was arrested in June 2018 and charged with DWI, second offense. He was stopped after making an illegal left turn. He had two to three beers, but he did not feel that he was intoxicated. He stated the police officer had difficulty with the breathalyzer. He retained an attorney and was going to contest the case, but decided to plead guilty with a plea bargain. He was sentenced to 90 days in jail, with 80 days suspended; a fine; and his driver's license was suspended for an extended period. He completed all of the terms of his sentence, except his license is still suspended. The suspension will end in February 2023, but he will require an Interlock ignition device for an additional two years. (Tr. at 21-22, 50-57, 61; GE 1, 3, 4)

Applicant has not been involved in any criminal activity since his 2018 arrest. He drank on rare occasions for about two years following the arrest, and he has been completely abstinent for about two years. His fiancée does not drink, and he has a health condition that precludes the use of alcohol. He regularly attends church, and he is committed to a healthy lifestyle that includes physical fitness. (Tr. at 22-23, 44-45, 54, 62; GE 3)

Applicant did not file his federal and state income tax returns when they were due for tax year 2018. He had some problems with his tax preparer, and the returns got away from him. The returns were filed in April 2020. The returns indicate that he was due refunds of \$709 from the IRS and \$73 from the state. There are no other income tax issues. (Tr. at 29-32; Applicant's response to SOR; GE 1, 3; AE L)

The SOR alleges the untimely 2018 tax returns, a charged-off auto loan for \$12,556 after the vehicle was repossessed, and 21 defaulted student loans totaling about \$100,671. The debts are established through credit reports and Applicant's admissions.

Applicant attributed his financial problems to his divorce and custody proceedings; child support; a government shutdown; the pandemic; and the court fees, fines, and attorney's fees associated with his two DWIs. (Tr. at 18, 24, 61)

In December 2020, Applicant started paying \$100 per month to the credit union for the \$12,556 charged-off auto loan. The creditor charged off \$13,661, but the balance was reduced by payments. He made nine payments through August 2021. The balance was reduced to \$11,856 by the August 2021 credit report; \$11,556 by the June 2022 credit report; and \$11,195 by the date of the hearing. He recently settled the debt for \$8,000, payable in at least 21 monthly payments of \$361. (Tr. at 20, 39-40; GE 5-8; AE G)

Applicant's federal student loans are paused because of COVID relief, and he restarted college this fall. However, Applicant decided the best course of action was not to stand on the deferments, but to aggressively pay down the loans. He lives at his parents' house with his fiancée and their child. He does not own a car. His fiancée works and contributes to their income. He has been paying \$1,172 per month toward all of the loans since April 1, 2022, but he plans to increase the payments. He intends to live at his parent's home for two to three years. (Tr. at 18-20, 26-28, 33-39, 61-63; GE 3; AE F, H-K)

Applicant reported his two alcohol-related arrests, his failure to file his 2018 tax returns, the delinquent auto loan, and the defaulted student loans on his January 2020 Questionnaire for National Security Positions (SF 86). He completed a number of IT and cyber certifications that make him more valuable to an employer, and he is four credits short of completing his graduate degree in the cyber field. His mother is a retired military officer and provides him guidance and moral support. (Tr. at 23-28, 61; GE 1; AE A-E) I found him to be open, honest, and candid about all of the issues.

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 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 are 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; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

Applicant was arrested for DWI in 2015 and 2018. The above disqualifying conditions are 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; 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.

Applicant has not had an alcohol-related offense in more than four years. He drank on rare occasions for about two years following the arrest, and he has been completely abstinent for about two years. His fiancée does not drink, and he has a health condition that precludes the use of alcohol. He regularly attends church, and he is committed to a healthy lifestyle that includes physical fitness. Applicant established a pattern of abstinence, and alcohol consumption no longer casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 23(a) and 23(b) are applicable.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant'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 conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(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 alcohol-related arrests were cross-alleged under criminal conduct. The above disqualifying condition is applicable.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(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 been abstinent for about two years, and there has been no criminal activity in more than four years. His fiancée does not drink, and he has a health condition that precludes the use of alcohol. He regularly attends church, and he is committed to a healthy lifestyle that includes physical fitness. He completed a number of IT and cyber certifications that make him more valuable to an employer, and he is four credits short of completing his graduate degree in the cyber field. His mother is a retired military officer and provides him guidance and moral support. I found him to be open, honest, and candid about all of the issues. Applicant is still a young man at 30 years old, but I believe he has matured and this kind of conduct is in the past.

The discussion above under alcohol consumption applies equally here. I find evidence of successful rehabilitation; the conduct is unlikely to recur; and it no longer casts doubt on Applicant's reliability, trustworthiness, and good judgment. AG ¶¶ 32(a) and 32(d) are applicable.

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; 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 has a history of financial problems, including defaulted student loans and a repossessed vehicle. He did not file his federal and state income tax returns for 2018 when they were due. The above disqualifying conditions are applicable.

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;

(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.

Applicant attributed his financial problems to his divorce and custody proceedings; child support; a government shutdown; the pandemic; and the court fees, fines, and attorney's fees associated with his two DWIs. Any financial issues resulting from the DWIs were not beyond his control. AG ¶ 20(b) has minimal applicability.

The 2018 federal and state income tax returns were filed in April 2020, after he submitted his SF 86, but well before the SOR was issued. The returns indicate that he was due refunds of \$709 from the IRS and \$73 from the state. There are no other income tax issues. Applicant's failure to file his tax returns when required raises questions about his judgment and willingness to abide by rules and regulations. Nonetheless, I am satisfied that he has learned a valuable lesson, and that all future returns will be filed on time. AG ¶ 20(g) is applicable.

Applicant has been paying the charged-off auto loan since December 2020, reducing the balance by about \$2,466 from \$13,661 to \$11,195. His student loans are in deferment. He decided the best course of action was not to stand on the deferments, but to aggressively pay down the loans. He lives at his parents' house with his fiancée and their child. He does not own a car. His fiancée works and contributes to their income. He has been paying \$1,172 per month toward all of the loans since April 1, 2022, but he plans to increase the payments. He intends to live at his parent's home for two to three years.

Applicant has a plan to resolve his financial problems, and he took significant action to implement that plan. He acted responsibly under the circumstances and made a good-faith effort to pay his debts. His finances do not cast doubt on his current judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about Applicant's finances are mitigated.

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 F, G, and J in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations, alcohol consumption, and criminal conduct security concerns.¹

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:	For Applicant
Subparagraphs 1.a-1.x:	For Applicant
Paragraph 2, Guideline G:	For Applicant
Subparagraphs 2.a-2.b:	For Applicant
Paragraph 3, Guideline J:	For Applicant
Subparagraph 3.a:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge

¹ The adjudicative guidelines give me the authority to grant conditional eligibility "despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue(s)." I have not done so as I have concluded the issues are completely mitigated, and it is unnecessary to further monitor Applicant.