



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



In the matter of:)
)
) ISCR Case No. 21-01842
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: John P. Wiersgalla, Esq.

11/15/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On October 5, 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 October 29, 2021, and requested a hearing before an administrative judge. The case was assigned to me on August 3, 2022.

The hearing was convened as scheduled on October 27, 2022. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. He has worked for his current employer since 2017. He served in the National Guard from 2004 until he was honorably discharged in 2014. He deployed to Iraq in 2008 and Afghanistan in 2012. He is a disabled veteran with an 80% disability rating from the Department of Veterans Affairs. He is a high school graduate with technical training and certifications. He married in 2010 and divorced in 2016. He has a 12-year-old child from the marriage. (Transcript (Tr.) at 13-16; GE 1)

Applicant attributed his alcohol issues at least partially to PTSD and dealing with the effects from his two combat deployments. By 2013, he was drinking almost every day. He was arrested in January 2016 and charged with driving while impaired (DWI). He pleaded guilty and was sentenced to three days in jail, a fine, and court costs. (Tr. at 17-21; Applicant's response to SOR; GE 1)

Applicant was arrested in September 2019 and charged with DWI with a blood alcohol concentration (BAC) of more than .15%. He pleaded guilty and was sentenced in March 2021 to fines, costs, and probation. (Tr. at 10-11, 21-28, 36; Applicant's response to SOR; GE 1, 2)

Shortly after his arrest in September 2019, Applicant entered a veterans treatment program for PTSD and alcohol use disorder. He reduced his alcohol consumption throughout his treatment until he stopped drinking in March 2021. He received treatment from the program through about May or June 2022. His therapist (M.A., LPC (licensed professional counselor), LCDC (licensed chemical dependency counselor)) wrote in October 2021 that Applicant was "extremely engaged and consistent with his treatment." He made significant progress and displayed an awareness of the negative impact his previous alcohol use had on his wellbeing. The therapist concluded:

[Applicant] has developed healthier coping strategies for managing his PTSD symptoms as well as coping strategies for managing his urges to use alcohol. He has displayed an increased ability to express difficult emotions related to his past trauma and effectively manages these emotions without the use of alcohol. (Applicant's response to SOR)

Applicant went through a court-monitored veterans program (separate from the program discussed above) as part of his probation. He is required as a condition of his probation to abstain from alcohol. He completed therapy and group sessions under the program. The court certified that he graduated from the program in March 2022, and he completed the aftercare program in October 2022. His probation runs to about March 2023. (Tr. at 10-11, 27, 29-32, 35-36, 47-48; Applicant's response to SOR; AE A)

Applicant initially testified that he had been abstinent from alcohol since March 2021. He later admitted that he violated his probation in June 2022 by drinking.¹ He stated he had significant stressors, including the death of his brother-in-law, and he had about four beers. He was required to write a “think piece” to the court explaining what happened, and the court increased his monitoring. He has been abstinent since June 2022 and plans to remain sober. He relies on the skills he learned through therapy and a strong support system through his friends and family. (Tr. at 10, 12, 17, 32-37, 48)

The SOR alleges five delinquent debts totaling about \$15,475, including \$3,841 in child support arrearages. The debts are established through credit reports and Applicant’s admissions.

Applicant has been paying \$1,060 a month since October 2017 toward his child support. Part of each payment goes to the arrearages. (Tr. at 12, 37-40; Applicant’s response to SOR)

Applicant settled the \$6,020 debt alleged in SOR ¶ 3.b with a \$5,500 payment in December 2021. He paid the \$2,565 (SOR ¶ 3.c) and \$1,842 (SOR ¶ 3.d) debts. He contacted the Defense Finance and Accounting Service about the \$1,210 debt (SOR ¶ 3.e), but the agency was unable to locate the debt. His current finances are stable as verified by a recent credit report with no adverse entries. (Tr. at 12-13, 16, 40-46; Applicant’s response to SOR; AE B, C)

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

¹ Any matter not alleged in the SOR will not be used for disqualification purposes. It may be considered in assessing Applicant’s credibility, in the application of mitigating conditions, and in the whole-person analysis.

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;

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

(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.

Applicant was arrested for DWI in 2016 and 2019. He received treatment for a condition diagnosed as alcohol use disorder. It is unclear who made the diagnosis, but it was confirmed by an M.A., LPC, LCDC. 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 attributed his alcohol issues at least partially to PTSD and dealing with the effects from his two combat deployments. His service to this country is commendable and is given considerable weight. He received extensive counseling for PTSD and alcohol use disorder. His second DWI was in September 2019, more than three years ago. However, he remains on probation until about March 2023, and he violated the terms of that probation in June 2022 by drinking. None of the mitigating conditions are sufficient to overcome concerns about his alcohol abuse, reliability, trustworthiness, and judgment.

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 are 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; and

(c) individual is currently on parole or probation.

Applicant's alcohol-related arrests were cross-alleged under criminal conduct. He is on probation until March 2023. The above disqualifying conditions are 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.

The discussion above under alcohol consumption applies equally here. He violated probation in June 2022 by drinking. Applicant's criminal conduct continues to cast doubt on his current reliability, trustworthiness, good judgment, and willingness to comply with laws, rules, and regulations. The above mitigating conditions, individually or collectively, are insufficient to alleviate those concerns.

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; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems, including child support arrearages and delinquent debts. 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
- (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.

Applicant paid or otherwise resolved all of the delinquent debts. His current finances are stable as verified by a recent credit report with no adverse entries. 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.

I considered Applicant's honorable military service, his combat deployments, and how that service contributed to his alcohol and legal problems. However, Applicant violated probation in June 2022, and he remains on probation until March 2023. 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."

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

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	Against Applicant
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline J:	Against Applicant
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline F:	For Applicant
Subparagraphs 3.a-3.e:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge