



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



In the matter of:)	
)	
)	ISCR Case No. 21-02117
)	
Applicant for Security Clearance)	

Appearances

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

09/26/2022

Decision

CERVI, Gregg A., Administrative Judge

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 31, 2020. On October 30, 2021, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and G. The DCSA CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Applicant responded to the SOR on December 7, 2021 and requested a decision based on the administrative (written) record, without a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The Government's written brief with supporting documents, known as the file of relevant material (FORM), was submitted by Department Counsel on February 2, 2022. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, rebut, or mitigate the security concerns. Applicant responded to the FORM by submitting two account statements that were admitted without objection. He did not object to the Government's exhibits. The case was assigned to me on April 12, 2022. Government Exhibits (GE) 2 and 8 are admitted into evidence without objection. GE 1 is the SOR and Applicant's Answer, which are already part of the record.

Findings of Fact

Applicant is a 40-year-old mechanical technician, employed by a defense contractor since 2020. He was unemployed from October 2019 to May 2020, and he previously worked as a test conductor for the same company from July 2007 to October 2019. He graduated from high school in 2000 and obtained a truck driving school certification in 2007. He married in 2012 and divorced in 2017. He has three children with whom he shares custody. He has held security clearances since 2008.

The SOR alleges under Guideline F that Applicant has seven delinquent debts totaling about \$76,826 (SOR ¶¶ 1.a - 1.g). Under Guideline G, The SOR alleges that Applicant was arrested in 2010, charged, and convicted of driving while intoxicated (DUI) and he was placed on probation for three years, fined and required to participate in a three-month alcohol treatment program (SOR ¶ 2.a); and that he was arrested, charged, and convicted of DUI in 2018, sentenced to one-day confinement, probation for 11 months and 29 days, fined, court costs, and was required to participate in an alcohol treatment program (SOR ¶ 2.b). Applicant admitted the SOR allegations without explanations. Applicant's admissions and the record evidence support the SOR allegations.

In Applicant's personal subject interview (PSI) by a Government investigator in September 2020, he stated that his financial difficulties arose while he was traveling for his employer and he turned over his finances to a live-in girlfriend suffering from bipolar disorder. He claimed that once he discovered the delinquent accounts, he terminated his relationship and began making payments on his past-due accounts. Applicant stated his intent to resolve all of his debts. He has not sought financial counseling.

In Applicant's SCA, he noted that his financial problems began in January 2018. He was warned by his company in April 2020 that he had unresolved debts. He stated that he "did some research and figured these charges were due to my ex." (SCA) He completed a financial interrogatory in June 2021 wherein he responded to each debt listed in the SOR. (GE 6) With one exception, he admitted that each account was unpaid, with no payment arrangements or payments applied. He did not attach any documents related to the accounts except one. The exception was an account with a collection agent (SOR ¶ 1.d) that he noted was a duplicate of an account listed by the original creditor, but not

alleged in the SOR. As explained below, the collection account remains unresolved. He also provided a portion of a checking account summary in which he claimed that he had cashier's checks issued to unlisted creditors totaling over \$10,000, and employer pay stubs showing regular pay in February 2021, and overtime wages in May 2021. The summary is of little value as it does not list the creditors to whom payments were made. Finally, he provided a personal financial statement showing no payments toward SOR debts, no bank savings, \$5,000 in investments, and a car. He has \$300 in net monthly remainder after paying monthly expenses. He noted that he is working overtime in order to pay a lump sum on the collection account alleged in SOR ¶ 1.d, as noted below.

In response to the FORM, Applicant supplied a document from the creditor that appears to correspond to SOR ¶ 1.a, a credit-card company debt for \$22,005. The document shows the account is cancelled with an outstanding balance of \$21,443, with partial payments of varying amounts made from March to July 2022. Applicant's 2020 credit bureau report (CBR) shows the account was charged off in July 2020 and closed by the credit grantor. (GE 4) Applicant's March 2021 CBR shows the last activity on the account in April 2018.

Applicant also supplied a document from a creditor that appears to correspond to SOR ¶ 1.b, a charged-off credit-card account for approximately \$16,746. The document is an account statement from June 2021 for an account by the same creditor but with a partial account number that does not match the account in SOR ¶ 1.b, as supported by CBRs in the record. Applicant's March 2021 CBR shows the last activity on the account was in April 2018. The statement shows a zero balance on a closed account with the last payment of \$1,766.93 in June 2020. Applicant partially redacted the full account number on the document he submitted, and it does little to mitigate SOR ¶ 1.b as it is impossible to determine, without more information, whether it is the same account as alleged in the SOR.

SOR ¶ 1.d – Collection account for approximately \$10,502. In Applicant's response to financial interrogatories, he noted that he had a payment plan for this account. The document he sent to support the payment plan was an offer to repay the account to the collection agent in two separate payment plans. He noted on the document that he has saved \$2,500 so far, and intends to save \$6,000 to apply to one of the offered options; however, no documentation of payment was offered. The account is not resolved.

No other documents were submitted regarding efforts to resolve the SOR debts, payment plans, or financial counseling. Applicant stated in his response to interrogatories that his debts arose from his former girlfriend not paying bills and maximizing charges on his credit cards while he was traveling for ten months for his company (he did not disclose the dates of travel). He noted that he was previously debt free with a good credit score. He reiterated that he has paid over \$10,000 toward debts, but did not disclose to whom the payments were made. He takes responsibility for the debts and is determined to resolve them, but 2021 was a difficult year because of his mother's relocation to another state.

Applicant was arrested, charged, and convicted of DUI in 2010 and 2018. He disclosed in his SCA that he was found guilty of misdemeanor DUI in 2010, and was sentenced to three-years' probation, fined, and required to attend three months of classes. He noted "everything has been taken care of and resolved," and that he completed alcohol classes in January 2011. (SCA, GE 8) In his PSI, he stated that the 2018 incident resulted from him driving after "drinking some beers." He did not recall the results of his blood alcohol test. He pleaded guilty to misdemeanor (second degree) DUI, and was sentenced to one-year probation, fined, and was to complete three months of alcohol-abuse classes. He said he completed all of the court's requirements, including completing the alcohol classes in January 2019. (SCA, GEs 7 and 8) He did not provide documentary information on the status of his probation, the type or frequency of the alcohol classes he attended or certifications of their completion, or evidence showing completion of individual alcohol-related counseling or treatment program. Since 2018, he continues to drink socially, about two drinks every two weeks.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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

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

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see, AG ¶ 1(d).

Analysis

Guideline F: Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant’s admissions and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 19(a) and (c).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

(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; and

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

Applicant incurred debts related to a poor decision to allow his live-in girlfriend to handle his finances while he was traveling for his employer. He did not explain why he did not supervise the payments of bills, track credit-card charges, and ensure timely debt payments while he was traveling. He noted the debts were incurred in 2018, and he was warned by his employer to resolve them in 2020. He also did not explain why he did not take measures to address the debts when they were incurred, or after he was warned by his employer. His only efforts to address the SOR debts were apparently in March to July 2022, when he made irregular payments toward the debt alleged in SOR ¶ 1.a. He is credited with such payments, but has not shown a sufficient track record of consistent payments to overcome his delay in addressing the debt. An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

Applicant also claims to have made \$10,000 in other debt payments, but he did not explain to whom the payments were made and whether he resolved any other debts. When an applicant claims that a debt has been paid, it is reasonable to expect him or her to present documentary evidence supporting that claim. ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). In addition, he has not sought financial counseling or professional assistance with resolving his financial issues.

The guideline encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). Applicant claimed that his former girlfriend failed to pay debts and over-charged his credit cards is not a condition that was out of his control. He failed to supervise the prompt, correct payment of bills, and did not take timely action to determine whether his

debts were being paid or to address unpaid accounts when discovered. I am not persuaded that he was an innocent victim, or that he took appropriate action to resolve the issues when he should have known they existed. He has not shown sufficient evidence of responsible actions to address his financial matters.

There is insufficient evidence in the record to determine that Applicant's financial problems will be resolved within a reasonable period and that he has shown he can maintain a measure of financial responsibility. A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. No mitigation credit fully applies to the debts in question.

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern for alcohol consumption:

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 conditions that could raise a security concern and may be disqualifying. 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.

Applicant's has two alcohol related driving incidents, including DUI convictions in 2010 and 2018. His second offense occurred after he attended a three-month alcohol abuse class required after his first DUI conviction. These incidents meet the conditions set forth in AG ¶¶ 22(a).

I have also considered all of the mitigating conditions for alcohol consumption under AG ¶ 23, including:

(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;

(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 of abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

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

Applicant has two alcohol-related arrests and convictions, the last in 2018. Although significant time may have passed between these incidents, the fact that Applicant attended alcohol-related classes while on probation from his 2010 DUI, and again drove after drinking alcohol in 2018, raises cause for concern. I am not persuaded that his alcohol consumption has changed to the extent that a recurrence of alcohol-related incidents is unlikely. There is insufficient evidence demonstrating a clear and established pattern of modified consumption; or that he has shown an interest in obtaining a medical evaluation or attending an effective alcohol treatment program given his history of alcohol-related driving incidents. There is a paucity of information in the record to persuasively show that Applicant's judgment has improved or that a similar incident is unlikely to recur. No mitigation credit is warranted or appropriate to alleviate the alcohol consumption security concern.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guidelines F and G in my whole-person analysis. There was little new information provided by Applicant to alleviate concerns for his financial responsibility and alcohol consumption issues. Since he elected to have a decision based on the administrative record, I was unable to further evaluate his demeanor, sincerity, and credibility, or further inquire into financial and alcohol-related matters.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude he

has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline F: Subparagraphs 1.a-1.g:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline G: Subparagraphs 2.a-2.b:	AGAINST APPLICANT Against Applicant

Conclusion

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

Gregg A. Cervi
Administrative Judge