



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



In the matter of:)
)
) ISCR Case No. 21-02127
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

11/02/2022

Decision

HALE, Charles C., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 11, 2020. On January 20, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F, G, and J. The 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on or about March 25, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the

Government's written case on May 20, 2022. On May 26, 2022, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on June 3, 2022, and did not respond. The case was assigned to me on October 3, 2022.

Evidentiary Issue

FORM Item 10 is a summary of a personal security interview (PSI) conducted on November 3, 2020. The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant the PSI was being provided to the Administrative Judge for consideration as part of the record evidence in this case, and he was entitled to comment on the accuracy of the PSI; make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate; object on the ground that the report is unauthenticated. I conclude that Applicant waived any objections to the PSI summary by failing to respond to the FORM. "Although pro se applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12010810 at 2 (App. Bd. Jul. 12, 2016). The Government exhibits included in the FORM are admitted in evidence without objection. (Items 3-10) Items 1 and 2 include the SOR and Answer, and are already part of the record.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.b, 1.d, 2.a-2.g, and the cross-allegation SOR ¶ 3.a with some explanations, and he denied SOR ¶ 1.c. with an explanation. His admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 31 years old. He has been working full time as an independent contractor for a federal contractor since March 2020. He is attending college part time. He served in the U.S. Army from 2010 to 2018, and was discharged honorably as a sergeant. He joined the Army National Guard in 2018 and received a General Under Honorable Conditions discharge in 2019. (Item 3 at 25.) He held a security clearance while on active duty. Applicant married in 2014 and separated in 2016. The child from the marriage resides with his spouse. He is in the process of obtaining a divorce. (Item 3 at 28-29.)

The SOR alleges four delinquent debts reflected in credit reports from October 2020 (Item 4) and December 2021 (Item 5). The evidence concerning these debts is summarized below.

Guideline F

SOR ¶ 1.a: **a mortgage that is past due for \$33,516.** The mortgage is in a foreclosure status with a total loan balance of \$179,566. Applicant disclosed the debt on his SCA. In his answer to the SOR he cited his marital situation for why he could not make the payments. He is attempting to sell the property to get it removed from his credit history. (Item 4 at 1 and Item 5 at 6.)

SOR ¶ 1.b: **a delinquent auto loan with a balance of \$8,617.** Applicant disclosed the debt on his SCA. In his answer to the SOR, he explained the car started having problems, and when he and his spouse separated, he did not have the money to get it fixed. The vehicle was repossessed. He states he intends to resolve the debt by the end of the year. (Item 4 at 7, Item 5 at 2, and Item 10 at 7.)

SOR ¶ 1.c: **account placed for collection of \$448.** Applicant denies this debt, stating it was paid off when he left the military. His dispute is noted in his credit reports. (Item 4 at 8 and Item 5 at 7.)

SOR ¶ 1.d: **account charged off in the amount of \$4,796.** Applicant admits the debt. He could not make the payments after he and his spouse separated. He states he settled with the debt collections company. Applicant's 2021 credit bureau report shows he settled the debt for a lesser amount. (Item 4 at 8 and Item 5 at 5.)

Applicant provided no documents regarding any payments towards or the current status of any of his SOR debts with his answer. He provided no details or documents about his current financial situation.

Guideline G and Guideline J

SOR ¶ 2.a: Applicant admits he consumed alcohol, at times in excess and to the point of intoxication from about October 2010 to at least June 2020.

SOR ¶ 2.b: Applicant admits he was arrested in December 2012 and charged with Driving While Impaired (DWI). He states he successfully completed a military command-referred alcohol treatment program. (Item 10 at 3, 7.)

SOR ¶ 2.c: Applicant admits he was arrested and charged with Drunk and Disorderly, and Resisting Apprehension by U.S. Army military police in about May 2016. (Item 7). He notes after receiving non-judicial disciplinary action, he [cleaned up his act] and he was able to get "repromoted" before he got out of the military. (Item 2 at 4). He states he successfully completed the alcohol treatment program he was referred to by his command. (Item 10 at 3, 7.)

SOR ¶ 2.d: Applicant admits he was arrested in January 2019 and charged with Driving Without Leave (DWL) for failing to stop at a red light. The case was dismissed. (Item 10 at 3-4.)

SOR ¶ 2.e: Applicant admits he was arrested in March 2019 and charged with misdemeanor offenses of Intoxicated and Disruptive in Public and Resisting Public Officer. The case was dismissed. (Item 10 at 4-5.)

SOR ¶ 2.f: Applicant admits he was arrested in June 2019 and charged with misdemeanor offenses of Intoxicated and Disruptive in Public and Indecent Exposure. After drinking at a bar, he took a ride share service home and attempted to enter the wrong home. He wrote an apology letter to the homeowner. The case was dismissed. (Item 10 at 5.)

SOR ¶ 2.g: Applicant admits he was arrested in June 2020 and charged with Intoxicate and Disruptive in Public and a Resisting Public Officer. The case was dismissed after he completed 24 hours of community service. (Item 10 at 5.)

Applicant states he has been able to hold a job, be a part of a team, and support members of the military. He recently received his armed guard certification. He is in the process of getting divorced and working to get “out of a deep hole” that he acknowledges he put himself in.

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.

Eligibility for a security clearance 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 all available and reliable information about the person, past and present, favorable and unfavorable.

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. See *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 ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 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.

Analysis

Guideline F: Financial Considerations

The security concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a

security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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's admissions and the evidence in the FORM establish two disqualifying conditions under this guideline: AG ¶ 19(a): inability to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations.

Applicant accrued delinquent debts, including a repossessed vehicle and a foreclosed home, during a period of unemployment and divorce. The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant acknowledges in his Answer he has not resolved any of the debts. He cites his spouse for not helping make payments on the mortgage and on one of the auto loans. He states his intent to resolve the financial issues and notes his contacts with his creditors. A delinquent debt is not considered mitigated because the creditor has charged off the account or repossessed the item. A creditor's decision to charge off a debt for accounting purposes does not affect the debtor's obligations to the creditor. He did not establish that he "initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts."

In his Answer, Applicant denies SOR ¶ 1.c, stating he paid off his military credit card. His statement is supported by his credit report. (Item 5 at 6.) However, the debt alleged in SOR ¶ 1.c is not his military credit card. In his PSI, he identifies the debt as an overpayment from his GI Bill. (Item 10 at 8.)

Even if they were incurred some time ago, Applicant's financial delinquencies are ongoing and unresolved. He did not establish that his financial problems are in the past and are unlikely to recur. He did not establish that he has made a good-faith effort to pay or resolve his debts. AG ¶¶ 20(a) and 20(d) do not apply.

Applicant's three largest debts are attributable to his divorce and a period of unemployment. The two largest SOR debts are his marital home and his auto loan. Both debts arose when he and his spouse separated. The divorce was a circumstance beyond Applicant's control. The first prong of ¶ 20(b) therefore applies. For full consideration under AG ¶ 20(b), however, Applicant must establish that he acted responsibly under the circumstances. He has not done so. The most recent record evidence (a December 2021 credit report) shows that the mortgage and the two auto debts remain past due, as well as a minor debt in collection status.

Even though Applicant's debts occurred largely due to circumstances beyond his control, he did not provide sufficient evidence that he acted responsibly under the circumstances to resolve them. AG ¶ 20(b) does not apply.

Guideline G: Alcohol Consumption

The security concern for alcohol consumption is detailed 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 following are potentially applicable:

AG ¶ 22(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

AG ¶ 22(a): habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

Applicant has ongoing issues with alcohol consumption, as he incurred six alcohol-related arrests between 2012 and 2020. AG ¶ 22(a) applies. AG ¶ 22(c) also applies, as the record evidence of the six alcohol-related arrests supports a finding that Applicant engaged in recent, habitual consumption of alcohol to the point of impaired judgment.

The following mitigating conditions are potentially applicable:

AG ¶ 23(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;

AG ¶ 23(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;

AG ¶ 23(c): the individual is participating in counseling or a treatment program, has no history of treatment and relapse, and is making satisfactory progress in a treatment program; and

AG ¶ 23(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's 2012 DWI arrest did not deter his behavior, as he incurred another DWI in 2019. His Article 15 punishment by the Army for drunk and disorderly conduct and resisting apprehension in 2016 had no impact on his behavior, as he incurred two arrests in 2019 and another in 2020 for being intoxicated and disruptive in public. Two of these arrests included an additional charge of Resisting Public Officer. He admits he had a drinking problem but states he has been sober since September of 2020. He asserts that he has fulfilled all his legal obligations for his 2012 DWI conviction, which included an alcohol treatment program, but this is uncorroborated. Even if that were the case, there is no indication that he is participating in an ongoing counseling or treatment program to rehabilitate his ongoing alcohol issues. His alcohol issues are too recent and too serious to be considered mitigated. Given Applicant's overall pattern and history of alcohol related issues, they, too, remain unmitigated. None of the above mitigating conditions apply.

Guideline J: Criminal Conduct

AG ¶ 30 expresses the security concern for criminal conduct:

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.

The following disqualifying conditions are potentially applicable:

AG ¶ 31(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;

AG ¶ 31(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

AG ¶ 31(c): individual is currently on parole or probation.

Applicant's two DWI convictions, his military offenses, and three arrests after leaving the military are cross-alleged under the criminal conduct guideline. The above disqualifying conditions apply.

The following mitigating conditions are potentially applicable:

AG ¶ 32(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

AG ¶ 32(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.

AG ¶ 32(a) and (d) do not apply for the same reasons set forth under Guideline G, above. Applicant's alcohol-related criminal issues are recent and ongoing. He has taken rehabilitative steps by completing his job training requirements. Given the record evidence, he needs to establish a much longer record of accomplishment of responsible behavior and compliance with rules, regulations and the law before his criminal conduct can be considered mitigated.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an 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. An 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.

I 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, G, and J in my whole-person analysis. While Applicant's financial delinquencies are largely attributable to circumstances beyond his control, they are nonetheless unresolved. He incurred an arrest and conviction in 2012 for DWI which had no impact on his behavior, as he incurred another DWI in 2019. His Article 15 punishment in 2016 for drunk and disorderly conduct and resisting apprehension had no impact on his behavior, as he incurred two arrests in 2019 and another arrest in 2020 for being intoxicated and disruptive in public. Two of these alcohol-related arrests included additional charges of resisting a police officer. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guidelines F, G, and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts and his alcohol-related conduct.

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 (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph 2: Guideline G (Alcohol Consumption):	AGAINST APPLICANT
Subparagraphs 2.a-g:	Against Applicant
Paragraph 3, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Charles C. Hale
Administrative Judge