



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



In the matter of:)	
)	
)	ISCR Case No. 20-02743
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel O'Reilley, Esq., Department Counsel
For Applicant: *Pro Se*

11/01/2022

Decision

Curry, Marc E., Administrative Judge:

Applicant mitigated the personal conduct, alcohol consumption, and criminal conduct security concerns, but failed to mitigate the financial considerations security concern. Clearance is denied.

Statement of the Case

On April 2, 2021, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline E, personal conduct, Guideline J, criminal conduct, Guideline G, alcohol consumption, and Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On June 9, 2021, Applicant answered the SOR, admitting all of the allegations

except SOR subparagraphs 1.e, 1.f, 4.a, and 4.d. He requested a hearing, whereupon the case was assigned to me on January 8, 2022. On May 23, 2022, the Defense Office of Hearings and Appeals issued a notice of hearing scheduling the case for June 8, 2022.

The hearing was held as scheduled. I considered ten government exhibits marked and incorporated into the record as Government Exhibits (GE) 1 through 10, and the testimony of Applicant. At the conclusion of the hearing, I left the record open to allow Applicant to submit additional exhibits. Within the time allotted, he submitted one exhibit that I marked and incorporated into record as Applicant's Exhibit (AE) A. The transcript (Tr.) was received on June 21, 2022.

Findings of Fact

Applicant is a 44-year old man with two adult children. He has been married since 1999. He is a veteran of both the U.S. Army and the U.S. Air Force, serving initially in the Army from 1997 to 2003, and then in the Air Force from 2003 to 2020. (Tr. 14; GE 2 at 5) He retired honorably at the rank of senior master sergeant. (Tr. 23, 25) He has held a security clearance since 1997. (Tr. 21)

Applicant has a high school diploma and has earned approximately three years of college credits. He is currently working on a bachelor's degree in information technology. (Tr. 14) He has been working for his current employer, an information technology company, since January 2021. (Tr. 14)

In June 2013, Applicant was involved in a car accident. When the police opened the glove compartment to retrieve his registration, they discovered a handgun. (GE 2 at 6) Subsequently, Applicant was arrested and charged with transporting a handgun on a roadway. After a court placed him on probation before judgment for 18 months, the charge was dismissed. (Tr. 15)

Applicant was in the military when he was charged with the handgun violation. The gun was legally registered, and he had just been transferred from a state where it was legal to have a handgun in one's automobile. He was unfamiliar with the gun laws of his new state of residence when the arrest occurred. (Tr. 15)

In December 2015, Applicant was arrested and charged with driving while intoxicated (DWI) and failure to stop/elude the police. (Answer at 1) The failure to stop/elude the police charge was *nolle prossed*. (GE 10 at 7) He was found guilty of the DWI charge, given a 30-day suspended jail sentence, and placed on probation for 12 months. As part of probation, his license was suspended and he had to attend an alcohol safety program. Also, the court ordered the installation of an ignition lock on Applicant's car for six months. (Answer at 1)

In January 2016, while on probation, Applicant was arrested and charged with DUI. Subsequently, he was found guilty and given a one-year suspended jail sentence, two years supervised probation, fined \$1,500, and ordered to attend six months of alcohol

counseling. (Answer at 2; GE 2 at 6) Applicant completed the requirements of probation. (GE 2 at 7) Per the lead counselor of the alcohol program, Applicant “was an attentive and active participant, and contributed with good thoughts in group session,” and it appeared “that he ha[d] gained knowledge on the consequences of alcohol . . . in his life.” (GE 7 at 2) Applicant stopped drinking alcohol after this most recent DUI arrest, and continues to remain sober. (Tr. 28) He included his DUI charges on his 2018 security clearance application, as required. (GE 1 at 34-37)

In April 2017, Applicant was issued a citation for violating the terms of parole by attempting to drive on a suspended license. (GE 8 at 7) Applicant denies this allegation, contending that his license was not suspended; rather, it was turned in to the motor vehicle administration when he moved to another state and applied for a new license. (Tr. 26) Applicant did not provide any documentation in support of this contention. He was found guilty.

In August 2019, Applicant was charged with displaying a registered plate issued for another vehicle. He was found guilty and fined \$70. (GE 9 at 19)

Applicant completed a security clearance application in February 2018. He answered “no” to a question requiring applicants to disclose any debts that were more than 120 days past due, as of the execution date of the security clearance application. (GE 1 at 41) When Applicant completed the application, he was more than 120 days delinquent on mortgage payments for a rental property that he owned. (Tr. 30) Specifically, Applicant purchased the property in 2000. (GE 2 at 6) After he left the Army and joined the Air Force in 2003, Applicant moved, but kept the property to rent out. (Tr. 21) In approximately 2012, the tenant moved out, at or about the time Applicant’s wife lost her job. (Tr. 21; GE 4 at 3) Unable to find another tenant and unable to pay the mortgage without receiving rent money to offset it, the mortgage became delinquent. Applicant knew that he and his wife had been struggling to make mortgage payments, but “didn’t know the exact extent of it,” as his wife was handling the payments and the property was located in another state. (Tr. 32 - 33) At the time of the foreclosure, payments had been delinquent for approximately six years. (GE 4 at 3)

By November 2019, the mortgage loan had been foreclosed upon, and the home was sold at auction. (GE 5 at 1) Applicant owed no deficiency after the sale. (Tr. 35; GE 5 at 3)

Applicant is indebted on an auto loan account that was charged off in the amount of \$3,837. He incurred this debt in 2018 when he took his car to an auto shop for repairs and could not afford the repair cost. (Tr. 22, 38) Applicant disputed the repair cost amount to the shop owner, and “they basically ended up selling the car at an auction.” (Tr. 38) The auto lender received the proceeds of the sale. (Tr. 22)

Applicant is indebted to a collection agent for a delinquent phone bill, totaling \$1,182. Applicant denies the debt. (Answer at 2) He is working to remove it from his credit

report with the help of a credit repair company. (Tr. 22) He provided no evidence substantiating the basis of his denial.

Applicant earns \$85,000 annually. (Tr. 46) He has \$2,000 in savings. Applicant's adult children and his grandchild live in his home. He helps his children pay their college tuition. (Tr. 40-41) According to his wife, he is "a strong and stable, husband, father, friend, and provider who has always worked hard to make sure that [his] family always had everything that [they] needed and many of the things that [they] wanted." (AE A at 1) Moreover, he has "learned from his mistakes . . .," and has become "an even better person," over the years. (AE A at 2)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 ¶ 1(d) requires that "[a]ny 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. 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline G: Alcohol Consumption

Under this guideline, "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 ¶ 21) Applicant's alcohol-related arrests trigger disqualifying conditions under 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."

Applicant's most recent alcohol-related arrest was nearly seven years ago in January 2016. Per the counselor who worked with Applicant after this arrest, he was actively engaged in the counseling sessions and appeared to have gained knowledge of the consequences of alcohol abuse in his life. Under these circumstances, 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 judgement," applies. Applicant has mitigated the alcohol consumption security concern.

Guideline J: Criminal Conduct

Under this guideline, "criminal activity creates doubt about a person's judgment, reliability, and trustworthiness [and] by its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." (AG 30) Although Applicant mitigated the DUI charges, as discussed in the section above, the remaining charges, in tandem, trigger the application of AG ¶ 31(a), "a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness." Also, Applicant's citation for driving on a suspended license in contravention of the terms of parole triggers the application of AG ¶ "violation or revocation of parole or probation, or failures to complete a court-mandated rehabilitation program," applies.

Applicant's most recent criminal violation occurred more than three years ago. Under these circumstances, 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," applies. Applicant has mitigated the criminal conduct security concern.

Guideline E: Personal Conduct

Under this guideline, "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." (AG ¶ 15) Moreover, "[o]f special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." Applicant's history of arrests is mitigated for the same reasons as discussed in alcohol consumption and criminal conduct sections, discussed above.

Applicant's omission of his delinquent mortgage from his security clearance application, however, raises the issue of whether the personal conduct concerns under AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities," applies. Applicant's inclusion of other derogatory information on his security clearance application, bolsters the credibility of his contention that the omission of the mortgage debt was an unintentional oversight. I conclude that AG ¶ 16(a) does not apply.

Guideline F: Financial Considerations

Under this concern, "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." (AG ¶ 18) The creditor of the debt alleged in SOR subparagraph 4.d is not identified, and the amount allegedly overdue is not specified. Given the vagueness of this allegation and Applicant's denial, I resolve it in his favor.

The remaining debts trigger the application of AG ¶ 19(a), "inability to satisfy debts;" and AG ¶ 19(c), "a history of not meeting financial obligations." Applicant disputes the debt alleged in SOR subparagraph 1.c, but provided no documentary evidence substantiating the basis of the dispute. AG ¶ 20(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," is not applicable.

Applicant incurred the most significant debt, the mortgage delinquency on a rental property during a period when the property was vacant, and at or about the time his wife lost her job. Absent the support of his wife, and a paying tenant, he was unable to make the mortgage payments. These circumstances were sufficiently beyond Applicant's control

to trigger the first prong of AG ¶ 20(b), “the conditions that resulted in the financial problem were largely beyond the person’s control”

Although Applicant’s rental property was foreclosed and sold for an amount that covered what he owed, I have lingering concerns about whether he acted responsibly with respect to this debt. Specifically, although both he and his wife owned the property, he claims he did not know it was delinquent when he completed the security clearance application, despite it being delinquent for six years by then. Similarly, taking a car to the shop for repairs and ultimately having it repossessed, at minimum, indicates a lack of attentiveness to one’s financial affairs. Consequently, I cannot conclude that Applicant acted responsibly under the circumstances. I conclude that the second prong of AG ¶ 20(b), “. . . the individual acted responsibly under the circumstances,” is inapplicable.

At the end of the day, it is Applicant’s burden to present evidence establishing that his financial situation is under control. Applicant has not done so. Specifically, he presented no evidence of current financial stability, such as a budget or a pay stub, and he presented no evidence that he was participating in financial counseling. Moreover, I cannot conclude that he no longer owes the disputed debt, as alleged in SOR subparagraph 1.c, because his dispute was unsupported by documentary evidence. In sum, AG ¶ 20(c), “the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control,” does not apply. Applicant has not mitigated the financial considerations security concerns.

Whole-Person Concept

Given the length of time that has elapsed since Applicant last was arrested or issued a citation, and the length of time he has been sober, I conclude he has mitigated the personal conduct, criminal conduct, and alcohol consumption security concerns. Applicant served honorably in two branches of the U.S. armed services, collectively for 23 years. Currently, he is working, attending college, helping his children finance their college educations, and is helping take care of his granddaughter. These indicia of sound character are insufficient, however, to overcome the unmitigated concerns regarding the management of his finances. Because Applicant owes no deficiency after the foreclosure, and the automobile lien was resolved, I am not concerned as much about his current indebtedness. Rather, the amount of time he was unaware the rental property mortgage was not being paid, and the insufficient explanation about how he took his car to the shop and it wound up being repossessed, raise questions as to whether his finances are under control and whether his delinquent indebtedness will recur. Under these circumstances, I conclude that it is not clearly consistent at this time to grant Applicant access to classified information.

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 E:	FOR APPLICANT
Subparagraphs 1.a – 1.f:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline G:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraphs 4.a – 4.c:	Against Applicant
Subparagraph 4.d:	For Applicant

Conclusion

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

Marc E. Curry
Administrative Judge