



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



In the matter of:	)	
	)	
	)	
	)	
Applicant for Security Clearance	)	ISCR Case No. 21-02599

**Appearances**

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

01/12/2023

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Applicant failed to demonstrate that he has acted responsibly to address and resolve his financial delinquencies. In addition, more time is needed to demonstrate successful rehabilitation after his recent diagnosis of alcohol use disorder and repeated alcohol-related criminal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 11, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations), G (alcohol consumption), and J (criminal conduct). This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

In his February 9, 2022 response (Answer), Applicant admitted all of the SOR allegations (¶¶ 1.a, 1.b, 2.a, 2.b, and 3.a). He requested a hearing before an

administrative judge. The case was assigned to me on June 8, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 28, 2022, setting the hearing for November 16, 2022. The hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 5. Applicant testified, but did not offer any documents. I admitted all proffered exhibits into evidence without objection. I held the record open for two weeks in the event either party wanted to supplement the record with additional documentation. I also provided Applicant a personal financial statement (PFS) to complete so I could determine his current financial standing. He did not submit any post-hearing documents. DOHA received the hearing transcript (Tr.) on November 23, 2022, and the record closed on December 2, 2022.

### **Findings of Fact**

Applicant is 33 years old. In 2012, he earned a bachelor's degree in aerospace engineering, and in 2016, he earned a master's degree. He has never married and does not have any children. Since October 2021, he has been employed for a government contractor as a structural design engineer. His annual salary is approximately \$93,500. He does not possess a DOD security clearance. (GE 1; Tr. 15-18, 22-23, 41)

### **Financial**

The SOR alleges two delinquent accounts totaling \$24,184, as follows:

SOR ¶ 1.a alleges that Applicant is indebted to a bank for a credit card balance charged off in the amount of \$19,782. He obtained a credit card to build up his credit while he was attending college. Over the years he overspent and was unable to make payments, especially after his arrest in 2019 for driving under the influence (DUI). In May 2021, he hired a consumer credit company and in September 2022, they were able to settle the debt with the creditor for about \$10,500. After the settlement was approved, Applicant made two payments of \$349.48 to the consumer credit company for payment to the creditor. He estimated that the settlement would be paid in full in about 30 months. He did not provide any documentation. This debt is unresolved. (Tr. 18-21, 42-44, 47-48, 60)

SOR ¶ 1.b alleges that Applicant is indebted to a bank for a credit card balance charged off in the amount of \$4,402. He testified that he had obtained a second credit card to help him pay off his original credit card debt, as cited above. Again, he could not make payments to the creditor following his 2019 DUI arrest, because the financial consequences of his arrest depleted his savings. He was also unable to include this delinquent account with the consumer credit company for management. In August 2022, he initiated contact with the creditor, but he has been unable to negotiate a settlement or a payment plan. Contrary to his testimony, Applicant disclosed in his February 2022 Answer that he had "accepted a settlement offer of the debt, to be paid over 10 months at \$316 per month." This debt remains unresolved. (Tr. 21-22, 45-49; Answer)

Applicant testified that he is current with his mortgage payment and utilities. He does not have a family to support and his car has been paid off. He reported that after paying his monthly expenses, he has about a \$1,000 monthly net remainder. He had to pay attorney fees of approximately \$5,000 following his two DUI arrests. He has about \$175,000 invested in his 401k, \$5,000 invested in stocks, and approximately \$2,000 in savings. He has not participated in a financial counseling program. After the hearing, I requested Applicant complete a PFS so that I could have a better understanding of his finances. He did not submit documentation, to include the PFS, while the record was held open for two weeks. (Tr. 23-26, 44-45, 50)

### **Alcohol and Criminal Conduct**

Applicant was arrested in September 2019 and charged with DUI. (SOR ¶ 2.a) He testified that he had been with friends drinking alcohol and watching football all day. He estimated that he had about seven beers and a couple of shots of whiskey. He thought he was fine to drive home, but he got a flat tire and pulled his car over to the side of the road. The police arrived, smelled alcohol, and asked Applicant to perform a field sobriety test. He failed the test and was arrested. While the court evaluated his case for placement into a diversion program, he was arrested for a second DUI, as set forth below. The court denied his diversion and merged the two cases together. In December 2020, he was found guilty and sentenced to six months in jail, suspended, fined \$1,551, and placed on one year of probation. He was also ordered by the court to complete outpatient alcohol treatment. (Tr. 27-29, 31, 33-34)

Applicant was arrested in March 2020 and charged with DUI and driving while license suspended or revoked. (SOR ¶ 2.b) Applicant went to a bar to celebrate a friend's birthday. He consumed alcohol, and when he attempted to leave, he hit another car parked on the street with the doors open. The police were called and he failed the field sobriety test. He registered .138% blood alcohol content (BAC) on the breathalyzer. His 2020 case was merged with the 2019 case, as set forth above. (Tr. 50-51; GE 5)

Applicant started alcohol treatment in about May 2020. He testified that he successfully completed the alcohol treatment in June 2022, but he had to be readmitted into the program after several months had passed without treatment. He was diagnosed with alcohol use disorder. Applicant continued to use alcohol against medical advice until October 2020, when he last consumed alcohol. Since that time, he has completely abstained from using alcohol. He does not use the services of Alcoholics Anonymous or any other alcohol support group to maintain his sobriety. He is required to have an interlock device installed on his car until April 2023. (Tr. 35-40, 51-52, 56-58)

Applicant first started consuming alcohol at the age of 16. He started to regularly consume alcohol, drinking several beers at one sitting, at the age of 22. He estimated that he consumed about 20 beers per week. Following his first DUI arrest in 2019, he did not stop consuming alcohol, as requested by his attorney, but he did moderate his alcohol use. After his second DUI arrest in 2020, he continued drinking for about seven months until October 2020, when he made a decision to completely abstain from using alcohol. (Tr. 52-58)

## Policies

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 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. . . .

Conditions that may raise financial considerations security concerns are provided 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.

Based on Applicant's admissions and credit reports in the record, the Government established that Applicant has two delinquent accounts totaling about \$24,184. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable in this case:

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

Applicant bears the burden of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017): See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Applicant attributed his financial delinquencies due to overspending and financial consequences following two DUI arrests in 2019 and 2020. Notwithstanding these events that impacted his finances, Applicant must demonstrate that he acted responsibly under the circumstances. He admitted that he had hired a consumer credit company, and after reaching a settlement, he had made two payments out of an estimated 30 payments to resolve his largest delinquent debt. The second delinquent debt remains unresolved.

It is clear from the record that Applicant made several poor decisions which placed him into a precarious financial quandary. His overspending and criminal conduct are certainly behaviors within his control. He earns \$93,500 annually from his employer. He admitted that he had \$1,000 net monthly remainder after paying his monthly expenses. Despite this monthly net remainder, he has only recently made two out of 30 payments to one delinquent creditor, which does not demonstrate a steady track record of payments, and he has not accepted a settlement or arranged payments on the second delinquent account. He also has ample money in reserves, such as \$175K in his 401(k). There is minimal evidence that his financial problems are being resolved or are under control because Applicant failed to provide documentary evidence that he has paid, or is paying his delinquent debts. Overall, I find that Applicant has not demonstrated that he acted responsibly to address his financial delinquencies. He did not provide sufficient evidence to mitigate the financial considerations security concerns.

### **Guideline G: Alcohol Consumption**

AG ¶ 21 describes the security concern about 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 provides conditions that could raise a security concern and may be disqualifying as follows:

- (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- with alcohol use disorder.

Applicant was arrested twice for DUI arrests, in 2019 and 2020, and he was subsequently diagnosed with alcohol use disorder. The record evidence establishes AG ¶¶ 22(a), 22(c), and 22(d).

AG ¶ 23 lists four conditions that could mitigate security concerns:

(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 or abstinence in accordance with treatment recommendations; and

(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.

To Applicant's credit, he has abstained from alcohol since October 2020. Although this is definitely a step in the right direction, it is insufficient to overcome the issues raised by his failure to provide treatment records to demonstrate that he is in full compliance with treatment recommendations. He had two relatively recent arrests for DUI, and he was unable to abstain from using alcohol per the advice of his attorney. It is important to note that even after he entered alcohol treatment and was diagnosed with alcohol use disorder, he continued to consume alcohol for about seven months against medical advice. In October 2020, he made a decision to stop drinking alcohol altogether. He did not complete his alcohol treatment until June 2022.

The state requires Applicant to keep an interlock device installed on his car until April 2023. This requirement demonstrates that the state believes there is a possibility that Applicant will drive again while under the influence of alcohol, and the interlock device is there to prevent that from happening. I find that more time is needed to demonstrate successful rehabilitation, and to show that future alcohol-related misconduct is unlikely to recur. Guideline G security concerns are not mitigated.

### **Guideline J: Criminal Conduct**

The security concern related to the criminal conduct guideline is set out in AG ¶ 30:

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.

AG ¶ 31 lists conditions that could raise a security concern and may be disqualifying. Three of these apply:

- (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;
- (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.

AG ¶ 32 lists two conditions that could mitigate the security concerns:

- (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.

There is no evidence of additional misconduct. Applicant's criminal conduct is related to his two alcohol-related arrests cited under Guideline G. It is unfortunate that he failed to learn from his past mistakes and was arrested a second time for DUI only six months after his first DUI arrest. Applicant is still required by the state to drive with an interlock device on his vehicle, and he is currently unable to provide evidence that he has successfully completed the terms of this requirement. I find that more time is needed to ensure that he does not repeat his criminal behavior. As such, his criminal behavior continues to cast doubt on his reliability, trustworthiness, and good judgment. Applicant failed to establish mitigation under the above mitigating conditions.

### **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 adjudicative guidelines and the whole-person concept. 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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant has failed to demonstrate that he has acted responsibly to address and resolve his financial delinquencies. His lack of action reflects poor judgment and unreliability. He is still required to drive with an interlock device on his car until April 2023, and I find more time is needed to demonstrate successful rehabilitation. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations, Guideline G, alcohol consumption, and Guideline J, criminal conduct. Eligibility for access to classified information is denied.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

## **Conclusion**

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

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Pamela C. Benson  
Administrative Judge