



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



In the matter of:)	
)	
)	ISCR Case No. 21-00161
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

05/15/2023

Decision

BENSON, Pamela C., Administrative Judge:

Although Applicant mitigated the alcohol consumption concerns, he failed to mitigate the financial and criminal conduct security concerns. National security eligibility is denied.

Statement of the Case

On April 28, 2021, 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). The DCSA CAF took action 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.

Applicant provided an undated response to the SOR (Answer). He admitted all of the SOR allegations, except for two financial allegations (SOR ¶¶ 1.j and 1.k.) He did not provide any supporting documentation with his Answer. He requested a determination on

the written record, in lieu of a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge.

On November 30, 2022, Department Counsel submitted a file of relevant material (FORM) and provided a complete copy to Applicant. Department Counsel's FORM includes Items 1 through 17. DOHA provided notice to Applicant that he had 30 days from the receipt of the FORM to provide objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. Applicant received the FORM on December 8, 2022, and he did not submit any information within the 30-day period. The case was assigned to me on March 9, 2023. I admitted into evidence the Government exhibits (Items 1-17), without objection.

Findings of Fact

Applicant is 45 years old. He enlisted in the U.S. Army in August 2001. He served on active duty until he received an honorable discharge in December 2006. In March 2007, he joined the Army National Guard, and he continues his military service to the present time. He earned a bachelor's degree in 2010. He married in March 2011 and his divorce was finalized in August 2019. He has a daughter, age 12. Since October 2014, he has been employed by a federal contractor as a systems technician. He has possessed a DOD security clearance since approximately 2014. (Item 3)

Financial Considerations

The SOR alleges under Guideline F that Applicant is indebted to 14 creditors for delinquent accounts totaling approximately \$64,400. Applicant's admissions and the credit bureau reports in evidence support the SOR Guideline F allegations.

Applicant completed his security clearance application (SCA) in February 2020, and he disclosed one delinquent personal loan in the amount of \$5,000. During his April 2020 background interview, Applicant told the authorized DOD investigator that his security clearance was administratively suspended in February 2020 because he had not turned in a completed SCA, as requested. Once he turned in the SCA, his security clearance was reinstated in March 2020. He also told the investigator that his wages were being garnished by another creditor in the amount of about \$900 monthly. When asked about any other delinquent accounts, Applicant stated that he was unable to collect enough information on his delinquent debts due to the limited amount of time he had to turn in his SCA. (Item 4)

The investigator confronted Applicant with several outstanding accounts obtained from a credit report. Applicant stated that beginning in 2015, he traveled frequently out-of-state to care for his elderly parents. The traveling and medical expenses over the years contributed to his financial problems. In 2018, he attempted to use a consumer credit counseling service to consolidate his debts, but he soon learned the service used negotiated settlements to resolve delinquent debts. He withdrew from the program, and

he was unable to make payments on his delinquent accounts. He currently works full time and has the financial means to make payments on these accounts. (Items 3 and 4)

Based on the credit reports in evidence, Applicant has experienced financial issues for at least two decades. In January 2005, the Army made a preliminary decision to deny his security clearance. His security clearance was ultimately granted on appeal, and he was issued a warning that subsequent unfavorable information may result in the suspension of his security clearance. (Items 3, 4, 10, 11 and 12)

Alcohol Consumption and Criminal Conduct

Applicant has been arrested five times since 1998. At least three of these arrests involved alcohol. In November 1998, he was arrested for Driving Under the Influence (DUI) after he drove his car into another vehicle. He entered into a diversion program with conditions, to include alcohol education, 90-day license suspension, and a \$1,029 fine. (SOR ¶ 2.a.)

SOR ¶ 2.b alleges that Applicant was arrested for his second DUI in May 2005. He admitted at the time of his arrest he had consumed about six or seven beers and failed a sobriety test. His blood alcohol content tested three times over the legal limit. Applicant pleaded guilty, and he was sentenced to three days in the workhouse, fined, and placed on probation for one year.

In June 2011, Applicant was arrested for domestic assault. During a 2014 interview, he admitted having grabbed his then-spouse during an argument. During his current investigation, he denied any physical violence related to the incident. The charge against Applicant was dismissed after he completed an anger management program. (SOR ¶ 3.a.)

SOR ¶ 2.c alleges that Applicant was arrested for his third DUI in June 2017. He admitted drinking one shot of whiskey and four or five beers before driving home. This arrest occurred despite Applicant's previous declaration following his second DUI that he would never drink and drive again.

SOR ¶ 3.b alleges that Applicant was arrested in the early morning hours of March 22, 2020, for fleeing the scene of an auto collision. He initially stated that he had struck an unknown co-worker's car while leaving the office. In response to a government interrogatory, Applicant stated that he was following his friend "back from my house to my girlfriend's house" when at approximately 2:30 a.m. he struck his friend's car while attempting to pass him. Rather than speak to his friend about the accident at the scene, he stated:

I tried to call [my friend] hoping we could talk on the phone about the damages. I didn't receive [an] answer so I headed home. On my way home I received a call from the [local] police department saying I fled the scene of an accident. I explain[ed] I didn't [and] I would give my statement in the

morning. I kept driving to my house under the impression everything was OK. When I got to [my] house there were two sheriff's deputies waiting for me at my house. I sat in the vehicle for quite some time; they let me go to the bathroom in my house and I sat and waited. Around 3:00 [a.m.] the[y] told me I was being arrested for leaving the scene of an accident. (Item 4)

Applicant denied alcohol was a factor in the incident but admitted he continues to regularly consume alcohol. There was no explanation given for his inconsistent statement concerning the accident. (Item 4)

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 concern under Guideline F (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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It 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.

The record evidence of Applicant's delinquent debts totaling \$64,400 establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts; and

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

AG ¶ 20 describes conditions that could mitigate security concerns. 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;

- (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;

(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 or provides evidence or actions to resolve the issue.

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).

The SOR alleges that Applicant has approximately \$64,400 in delinquent debt. There is evidence in the record that he experienced financial hardship after traveling out-of-state to attend to his elderly parents and the unforeseen expenses associated with the travel and their medical care. This is a circumstance beyond his control, but he must also show that he acted responsibly under the circumstances to resolve his financial issues.

There is little information in the record to show why Applicant was unable to make better progress with his delinquent accounts, especially noting that he has been continuously employed by a federal contractor since 2014. In 2018, he attempted to use a consumer credit counseling service to consolidate his debts, but he withdrew from this program once he learned this service negotiated with the creditors to settle outstanding accounts instead of debt consolidation. Thereafter, he never enlisted the services of a consumer debt consolidation program, and his inability or unwillingness to pay these outstanding accounts continued.

Applicant did not provide supporting documentation with his SOR Answer, or after he received the Government's FORM. There is insufficient evidence in the record to show that he has either paid, is paying, or is actively working to resolve any of his delinquent accounts. He denied two of the delinquent accounts in his Answer, but he did not give an adequate explanation as to why he denied these accounts. Allowing his financial problems to persist for multiple years does not support a finding that he acted responsibly under the circumstances. All of Applicant's alleged debts are still ongoing and unresolved. His failure to adequately resolve his debts over time indicates his financial issues are a continuing concern. For the forgoing reasons, Applicant failed to establish mitigation under AG ¶ 20.

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.”

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following is 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; and
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

The record evidence establishes AG ¶¶ 22(a) and 22(c). Applicant was arrested on three occasions for DUI between 1998 and 2017. His blood alcohol content (BAC) in a breathalyzer was three times the legal standard for driving under the influence. The level of his BAC establishes binge alcohol consumption.

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;
- (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 was arrested for three alcohol-related offenses in 1998, 2005, and 2017. There is nothing in the record to show that he had been diagnosed with an alcohol use disorder, or that he failed to follow treatment recommendations once diagnosed. Although his repeated alcohol-related offenses are troubling, six years have passed without further alcohol-related incidents. Enough time has passed to show his past alcohol-related misconduct no longer casts doubt on his current reliability, trustworthiness, and good judgment. Applicant successfully mitigated the alcohol consumption security concerns.

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. One potentially applies:

(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; and

(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.

The record evidence establishes AG ¶¶ 31(a) and 31(b). Applicant was involved in multiple arrests from 1998 to 2020.

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.

Applicant's criminal conduct is concerning, especially in the context of his continuous possession of a DOD security clearance since approximately 2014. His criminal conduct included arrests for multiple violations between 1998 and 2020. Applicant's inconsistent statement about the circumstances leading up to his most recent arrest in 2020 is also troubling. I find that Applicant has established a pattern of criminal conduct, and he is either unable or unwilling to follow rules, laws, or regulations. His repeated criminal misconduct demonstrates poor judgment and shows he does not learn from past mistakes. There is insufficient evidence in the record to establish successful rehabilitation, or to demonstrate that his criminal conduct will not recur. I find that more time is needed to ensure that he does not repeat additional criminal violations. As such, his behavior continues to cast doubt on his current reliability and good judgment. Applicant failed to establish mitigation under AG ¶ 32.

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 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 demonstrated that he is unable to follow rules, laws, and regulations, and his pattern of rule violations is long. Access to classified and protected information requires faithful adherence to the rules and regulations governing such activity. A person who fails to address concerns, even after having been placed on notice that his or her access is in jeopardy, may lack the willingness to follow rules and regulations when his or her personal interests are at stake.

Applicant has not acted responsibly by failing to address his financial delinquencies. 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. In light of all the facts and circumstances surrounding this case, I conclude Applicant has mitigated alcohol consumption concerns, but he has not met his burden of proof and persuasion to mitigate the financial considerations 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 F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.m.:	Against Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a. - 2.c:	For Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraphs 3.a. - 3.c:	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 to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge