



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



In the matter of:)
)
) ISCR Case No. 21-01197
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Mathew J. Thomas, Esq.

05/03/2023

Decision

Curry, Marc E., Administrative Judge:

Applicant satisfied two of the three alleged financial delinquencies and is no longer behind on bill payments for the third debt. He now drinks in moderation, and approximately four years have passed since his last alcohol-related episode. Under these circumstances, I conclude Applicant has mitigated the financial considerations and alcohol consumption security concerns. Clearance is granted.

Statement of the Case

On October 24, 2022, Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant. The SOR alleged facts raising security concerns under Guideline F, financial considerations, and Guideline G, alcohol consumption, 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 November 9, 2022, Applicant answered the SOR, admitting the allegations and requested a hearing, whereupon the case was assigned to me on March 9, 2023. On March 10, 2023, the Defense Office of Hearings and Appeals issued a notice of video teleconference hearing, scheduling the hearing on March 14, 2023. Applicant, through counsel, waived his right to 15 days' notice of hearing. The hearing was held as scheduled. I considered Applicant's testimony, together with 13 Government Exhibits (GE), marked and incorporated into the record as GE 1 through GE 13, and 15 Applicant exhibits (AE), marked and incorporated into the record as AE A through AE O.

At Applicant's request, I extended the record through March 29, 2023, to afford him the opportunity to submit additional exhibits. Within the time allotted, he submitted one additional exhibit, marked and incorporated into the record as AE P. Both parties filed post-hearing memoranda on March 13, 2023. I have incorporated them both into the record as Hearing Exhibit I. The transcript (Tr.) was received on March 23, 2023.

Findings of Fact

Applicant is a 32-year-old married man with four stepchildren. After graduating from high school in 2009, he enlisted in the U.S. Army, where he served through 2018. (Tr. 19) He was honorably discharged. (Tr. 19; AE N) Since 2018, he has been working in the field of communications technology. (GE 1 at 13; Tr. 44-45)

In 2016, Applicant cosigned an apartment lease with a friend and her family. He did so because they were unable to qualify for a lease on their own. (Tr. 24) Neither Applicant's friend nor her husband was working at the time. Applicant agreed to help them make their rental payments. The agreement worked for a month before his friends stopped making their share of the payments. (Tr. 24) Applicant considered ending the lease early and giving the landlord two months' rent payments, required under the terms of the lease for early termination. However, he decided to stay with the lease through the end of the one-year term because he did not want to "put out" his friends' children, having himself experienced a bout of homelessness as a child when his parents' house was foreclosed. (Tr. 26; Tr. 38) Subsequently, Applicant continued paying his friends' rent. Each successive month, however, he began incurring \$500 of debt that he could not afford to pay off. (Tr. 26) By the end of the term of the lease, Applicant's friends had moved from the apartment. By then, Applicant's bills had become delinquent. (Tr. 26-28)

Subparagraph 1.a of the SOR is a deficiency remaining from a repossessed vehicle, totaling approximately \$25,000. (Answer at 1) In November 2022, Applicant entered into a payment arrangement with the creditor, in which he agreed to pay \$200 per month to satisfy the debt. (AE A) He has been in compliance with the agreement since then. (AEs A, P; Tr. 42) In February 2023, Applicant filed his federal and state income tax returns with the help of an accounting firm. (AE C) Per a firm representative, Applicant will receive federal and state refunds totaling \$6,184. (AE C) Once Applicant receives these refunds, he intends to apply the money to the automobile deficiency. (Tr. 27)

Subparagraph 1.b of the SOR, totaling \$302, is a delinquent balance remaining on an insurance policy after Applicant terminated it. When Applicant switched policies, he was unaware that he still owed a payment. (Answer at 2) Upon becoming aware of the charge in January 2022, Applicant paid the balance. (AE E)

Subparagraph 1.c of the SOR, totaling \$2,163, is a delinquent phone bill. Applicant's roommates incurred about \$900 of this debt. (Tr. 28) In November 2022, Applicant contacted the creditor and negotiated a reduced payoff balance of \$1,406. (AE F) In January 2023, he paid the negotiated balance in full. (AE G)

Applicant earns \$70,000 per year. (Tr. 46) He maintains a budget and has \$3,900 of monthly discretionary income. (Tr. 47)

In 2014, Applicant was arrested and charged with driving while intoxicated (DWI). (GE 9) He was convicted and sentenced to 12 months' probation. (GE 9 at 2) As part of the terms of probation, he had to attend alcohol education classes, participate in community service, obtain a substance abuse assessment, and abstain from alcohol for one year. (Tr. 50; AE J) Applicant complied with the probation terms as ordered. (AE I) A psychologist evaluated him and concluded he did not have an alcohol consumption problem. (AE J)

In 2019, after a night of heavy drinking with friends, Applicant blacked out. Six days later, a female friend, with whom he was socializing on the night he blacked out, accused him of shoving her to the ground and choking her. These accusations led to Applicant's arrest for assault. Applicant denies this behavior, but does not remember anything from that night. Later, during mediation, the woman agreed to drop the charges if Applicant completed anger management. Applicant completed anger management classes, as requested, and she dropped the charges. (Tr. 54) The record is inconclusive as to whether Applicant assaulted the friend, as alleged.

Applicant has not drunk alcohol to the point of intoxication since the 2019 episode and since October 2021 has abstained from alcohol entirely. (Tr. 33) He does not drink alcohol because he believes that alcohol consumption could lead to alcohol abuse, which could potentially jeopardize the safety, welfare, and financial security of his family. (Tr. 34)

Applicant is highly respected by his peers. Per a fellow veteran and former coworker, Applicant is an open, honest, and dedicated man who has grown over the years. (AE O) A friend describes him as "one of the best individuals [he has] ever known." (AE O at 2) Per the civilian executive officer for the agency Applicant supports, he has a strong work ethic, a tremendous thirst for knowledge, and is a valued member of the team.

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 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) Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting’s financial obligations.”

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

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

Applicant satisfied the debt alleged in subparagraph 1.b approximately nine months before the issuance of the SOR. I resolve this subparagraph in his favor.

The debts alleged in subparagraphs 1.a and 1.c stemmed, in part, from financial difficulties that Applicant experienced when a couple with whom he cosigned a lease stopped paying their rent, leaving him responsible. Neither person was working when Applicant agreed to cosign the lease. Moreover, he was aware that they were having problems obtaining a rental property before they asked him for help. Consequently, it was reasonably foreseeable that they were going to have problems making their rental payments. Therefore, the financial problems Applicant experienced after they stopped paying cannot be construed as having been caused by circumstances beyond his control. AG ¶ 20(b) does not apply.

Nevertheless, Applicant has satisfied the debt alleged in subparagraph 1.c and he is in compliance with a payment plan to satisfy the debt alleged in subparagraph 1.a.

Moreover, he maintains a budget, and he has ample monthly discretionary income to continue complying with the payment plan. Consequently, although these financial problems were not remote enough in time to trigger the application of AG ¶ 20(a), the clear indications that he is paying down the remaining debt are sufficient to trigger the application of AG ¶ 20(c) and AG ¶ 20(d). In sum, I conclude Applicant has mitigated the financial considerations security concerns.

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.” Applicant’s 2014 and 2019 alcohol-related arrests trigger the application of 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 20(c), “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 not had any alcohol-related incidents in almost four years, and he has been abstinent entirely from alcohol consumption for the past 18 months. He stopped using alcohol because he recognizes that alcohol use could lead to alcohol abuse, which could have a deleterious effect on his family, his job, and his health. Under these circumstances, I conclude that 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,” applies. I conclude Applicant has mitigated the alcohol consumption security concerns.

Whole-Person Concept

Upon considering all of the mitigating and disqualifying conditions in the context of the whole-person concept, I conclude Applicant has mitigated the 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:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT

Subparagraphs 2.a – 2.b:

For Applicant

Conclusion

Considering the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge