



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



In the matter of:)
)
) ISCR Case No. 22-01345
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

06/20/2023

Decision

HALE, Charles C., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 4, 2021. On January 13, 2023, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and G. The DoD 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 February 28, 2023, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's file of relevant material (FORM) on March 9, 2023. On March 10, 2023, a

complete copy of the FORM was sent to Applicant. He received the FORM on March 20, 2023. His Response to the FORM, which included two exhibits, was received on April 18, 2023. The case was assigned to me on June 1, 2023.

The SOR and the Answer are the pleadings in the case. FORM Items 2 through 8 and the documents submitted with Applicant's Response, marked as Applicant exhibits (AE) A and B, are admitted into evidence without objection.

Findings of Fact

Applicant admitted all allegations, SOR ¶¶ 1.a-1.f and SOR ¶¶ 2.a-2.b. His admissions and statements in his Answer and Response 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 37 years old. After serving honorably in the U.S. Navy from November 2004 to February 2020, he experienced approximately eight months of unemployment. (Item 2 at 13-14 and 18.) He has worked for his security clearance sponsor as a trainer since January 2021. (Item 2 at 11.) He held a security clearance while on active duty. (Item 2 at 36.) He divorced his first spouse in early December 2009 and married his current spouse ten days later. (Item 2 at 21-22.) He has three minor children and one minor stepchild. He has a high school diploma. (Item 2 at 21-22.)

The SOR alleges six delinquent debts totaling \$26,514, reflected in three credit reports from May 2020 (Item 5), March 2021 (Item 6), and April 2022 (Item 7). Applicant was able to settle two delinquent debts totaling \$1,669, which still had an active collection on them. (Response, AE-A and AE-B.) He stated his intent to obtain a consolidation loan to satisfy the remaining debts. (Response.) The evidence concerning these debts is summarized below.

Guideline F

SOR ¶¶ 1.a-1.b: **two accounts charged off in the amounts of \$12,618 and \$9,650.** Applicant admits the debts. In response to August 2021 interrogatories from DoD, he admitted that he had not made any payments or made payment arrangements. (Item 3 at 3 and Item 7 at 2-3.) He states his plan is to let the debts he has recently resolved "settle on" his credit report and then to get a consolidation loan to satisfy the remaining debts. (Response.)

SOR ¶ 1.c: **account placed for collection of \$1,142.** Applicant admits the debt. At the time of the August 2021 interrogatories, he admitted that he had not made any payments or payment arrangements. (Item 3 at 3 and Item 5 at 24.) He was able to reach a settlement with the creditor. He paid \$300 to settle this account in late March 2023. (AE-A.)

SOR ¶ 1.d: **account placed for collection of \$527.** Applicant admits the debt. At the time of the August 2021 interrogatories, he admitted that he had not made any payments or payment arrangements. (Item 3 at 3 and Item 5 at 24.) On March 27, 2023, he paid the debt in full. (AE-B.)

SOR ¶ 1.e: **account placed for collection of \$1,988.** Applicant admits the debt. In response to August 2021 interrogatories from DoD, he admitted that he had not made any payments or payment arrangements. (Item 3 at 3.) He states his plan is to let the debts he has recently resolved “settle on” his credit report and then to get a consolidation loan to satisfy the remaining debts. (Response.)

SOR ¶ 1.f: **account charged off in the amount of \$589.** Applicant admits the debt. In response to August 2021 interrogatories from DoD, he admitted he had not made any payments or payment arrangements. (Item 3 at 3 and Item 5 at 24.) He states his plan is to let the debts he has recently resolved “settle on” his credit report and then to get a consolidation loan to satisfy the remaining debts. (Response.)

Applicant provided no documents regarding a budget. He provided no details or documents about his current financial situation and how he would be able to resolve all the remaining debts “in the next few months.” (Response.) He blamed his financial situation on the transition from the military to a civilian job which resulted in a pay cut as well as periods of unemployment in 2020. (Item 2 at 12, 14 and Item 4 at 7.)

Guideline G

SOR ¶ 2.a: Applicant admits he was arrested on December 8, 2006, and charged with driving under the influence (DUI) of alcohol. (Item 2 at 33.)

SOR ¶ 2.b: Applicant admits he was arrested on February 2, 2019, and charged with driving while impaired (DWI). (Item 2 at 31.)

Applicant maintains he has learned from his mistakes. In his SCA he states he had completed his 48 hours community service and will pay his fines at his final hearing in February 2021. In his Answer and during his security clearance interview he asserted that he has fulfilled all his legal obligations for his 2019 DWI conviction. As a result of the incident, he completed the military substance abuse rehabilitation program (SARP) in December 2019. (Item 2 at 36 and Item 4 at 2.) He added in his security clearance interview “stuck to” his after care plan, but this is uncorroborated. After his personal evaluation concluded alcohol would create trouble for him, he stated that he now abstains from alcohol use. His December 2006 DUI charge was reduced to reckless driving and his license was suspended for six months and he was fined. (Item 4 at 7 and Item 8 at 1-2.) He argued that these lapses in judgment are not a full representation of his character. (Response.)

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 consumer debts during a period of unemployment after leaving military service. 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.

AG ¶¶ 20(a) and 20(d) do not apply. Applicant's financial delinquencies are ongoing and unresolved. He has been employed since January 2021. It is well-established that the timing of debt payments is a relevant consideration for a judge to deliberate whether an applicant has acted in a reasonable and responsible manner in addressing financial problems. For example, to receive full credit under Mitigating Condition 20(d), an applicant must initiate and adhere "to a good faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d). His recent actions to resolve two debts only after receiving the FORM does not receive this mitigating credit. See ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009). He did not establish that he has made a good-faith effort to pay or resolve his debts.

Applicant attributes his debts to a period of unemployment and underemployment after leaving the military. The first prong of AG ¶ 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. He completed his SCA in February 2021. The most recent record evidence (April 2022 credit report) shows all the debts remained past due. He addressed two debts, SOR ¶¶ 1.c and 1.d, approximately one week after he received the FORM. An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. See ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017). 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 fully 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 is 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

Applicant incurred alcohol-related arrests in 2006 and 2019. AG ¶ 22(a) applies. AG ¶ 22(c) also applies, as the record evidence of the two 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 2006 DUI arrest did not deter his behavior, as he incurred another DWI in 2019. He acknowledges the maladaptive effect alcohol has had on his life and states he now abstains from alcohol. He asserts that he has fulfilled all his legal obligations for his 2019 DUI conviction and that he also completed the military's SARP, but he has not submitted documentary evidence to corroborate his claims. He has submitted no evidence that he is participating in an ongoing counseling or treatment program or that he is making satisfactory progress in any treatment program. While he declares he now abstains from alcohol and has no intentions of drinking in the future, Applicant did not provide sufficient evidence to establish that the security concern regarding his history of problematic alcohol involvement is mitigated. None of the above mitigating conditions fully apply.

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 and G in my whole-person analysis. While Applicant's financial delinquencies are largely attributable to circumstances beyond his control, they remain largely unresolved. He was arrested for DUI in 2006 and was arrested and convicted of DWI in 2019. 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 and G 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.b and 1.e-1.f:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant

Paragraph 2: Guideline G (Alcohol Consumption): **AGAINST APPLICANT**

Subparagraphs 2.a-b:	Against Applicant
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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