



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-02346
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

11/02/2023

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations), G (Alcohol Consumption), H (Drug Involvement and Substance Misuse), and J (Criminal Conduct). Concerns under Guidelines G, H, and J are mitigated, but concerns under Guideline F are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 25, 2020. On February 22, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F, G, H, and J. The DCSA CAS acted under Executive Order (Exec. Or.) 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 (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on March 10, 2023, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on May 11, 2023. On May 18, 2023, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. The FORM included an amendment to the SOR, alleging two additional delinquent debts under Guideline F (SOR ¶¶ 1.j and 1.k). He received the FORM on June 6, 2023, and did not respond. The case was assigned to me on September 28, 2023.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.d, 1.e, 1.g, 2.a, 2.b, 3.a-3.c, and 4.a. He denied the allegations in SOR ¶¶ 1.a-1.c, 1.f, 1.h, 1.i, and 4.b. He did not respond to the amendments to the SOR, and I have treated his lack of response as denials of the allegations in SOR ¶¶ 1.j and 1.k. His admissions are incorporated in my findings of fact.

Applicant is a 45-year-old senior principal software development analyst, employed by a defense contractor since April 2020. He was employed by several private-sector companies from May 2009 until April 2020. He was unemployed from June 2017 to January 2018, May to August 2019, and October 2019 to April 2020. His unemployment from June 2017 to January 2018 occurred after he was laid off for unsatisfactory performance.

Applicant has never married and has no children. He has lived with a cohabitant since September 2019. He received a bachelor's degree in computer science in June 2004.

The SOR, as amended, alleges eleven delinquent debts, which are reflected in credit reports from May 2023 (FORM Item 5), October 2022 (FORM Item 6), and January 2021 (FORM Item 7). The evidence concerning these debts is summarized below.

**SOR ¶ 1.a: credit-card account placed for collection of \$15,703.** The account was charged off, but the credit report from May 2023 reflects that Applicant made a payment in April 2023 and the balance has been reduced to \$12,639. (FORM Item 5 at 6)

**SOR ¶ 1.b: credit-card account placed for collection of \$10,129.** Applicant settled this account for less than the full balance. The credit report reflecting this information does not reflect when the account was settled, or the amount paid to settle it. (FORM Item 5 at 8)

**SOR ¶ 1.c: account placed for collection of \$9,909.** Applicant is making payments on this account under a partial payment agreement. The credit report reflecting this payment agreement does not reflect when the agreement was made, the amount of the payments, or the balance remaining on the debt. (FORM Item 6 at 2)

**SOR ¶ 1.d: unsecured personal loan placed for collection of \$7,458.** This loan was charged off for \$12,458. The May 2023 credit report reflects that Applicant made a payment of \$780 in March 2023. (FORM Item 5 at 6)

**SOR ¶ 1.e: credit-card account placed for collection of \$3,089.** This account was charged off for \$3,089 and closed by the lender. The last payment was in February 2022. (FORM Item 5 at 5)

**SOR ¶ 1.f: credit-card account placed for collection of \$2,368.** This account was settled for less than the full amount. The credit report reflecting the settlement does not reflect when it was settled, or the amount paid to settle it. (FORM Item 5 at 7)

**SOR ¶ 1.g: same debt as SOR ¶ 1.e.**

**SOR ¶ 1.h: collection account for \$1,919.** Applicant denied this debt, claiming it was paid in full. The May 2023 credit report reflects an unpaid balance of \$1,382. (FORM Item 5 at 3).

**SOR ¶ 1.i: collection account for \$1,615.** Applicant denied this debt, claiming it was paid in full. The October 2022 credit report reflects it as unpaid. (FORM Item 6 at 3.)

**SOR ¶ 1.j: credit-card account charged off for \$2,277.** The May 2023 credit report reflects that this account was charged off and closed. It is not resolved. (FORM Item 5 at 5)

**SOR ¶ 1.k: credit-card account referred for collection of \$814.** The May 2023 credit report reflects that this account is past due. The last payment was in April 2023. It is not resolved. (FORM Item 5 at 3.)

Applicant attributed his delinquent debts to his three periods of unemployment in 2017-2020. During his unemployment in 2017, he cashed in \$14,000 in bitcoin to pay bills. In December 2020, his vehicle was repossessed, but he redeemed it and is current on the payments. As of February 2021, he was earning about \$140,000 per year. (FORM Item 4, subject interview at 2-3)

Applicant's excessive alcohol consumption is alleged in SOR ¶ 2.a. He was arrested for driving under the influence (DUI) in July 2010. He pleaded guilty, his license was suspended, and he completed a nine-month diversion program, followed by three months of probation. (FORM Item 4, subject interview at 5-6). The DUI is also alleged as criminal conduct in SOR ¶ 4.a.

Applicant consumed alcohol heavily from 2014 to 2018. He drank six beers every weekday and 24 beers on weekends. In 2018, Applicant decided to reduce his drinking. He did not seek or receive treatment. In February 2021, he told a security investigator

that he was avoiding bars and limiting himself to one drink on one night per year. (FORM Item 4, subject interview at 5)

Applicant had an alcohol-related altercation with a then cohabitant in 2014 that occurred when they were both drinking heavily. The only evidence of this altercation is Applicant's explanation during the subject interview in February 2021. According to Applicant, his cohabitant initiated the physical contact by biting, hitting, and scratching him and smashing a computer monitor on his head. During the altercation, they each threw the other's cellphone into the street. He was charged with felony domestic violence and damaging a communications device, but the charges were dismissed. (FORM Item 4, subject interview at 6)

Applicant's drug involvement is alleged in SOR ¶¶ 3.a, 3.b, and 3.c. In his SCA, he stated that he no longer enjoys marijuana, that he stopped using cocaine because "it is not worth the personal risk and attracts an unsavory crowd," and he stopped using nitrous oxide because "it negatively affects awareness while in use." He disclosed that he used nitrous oxide inhaled from whipped cream dispensers while unemployed from September 2017 to January 2018, and in December 2020, after being hired by his current employer. (FORM Item 3 at 43, 44)

During an interview with a security investigator in February 2021, Applicant disclosed that he smoked marijuana "a few times" each year from 1994 to November 2017. He disclosed that he used cocaine with friends five to seven times between July 2017 to 2018. He told the investigator that he used cocaine because a "romantic interest" used it, but the "romantic interest" did not develop, and he stopped using it. (FORM Item 4, subject interview at 3-5)

In response to DOHA interrogatories in February 2023, Applicant stated that his last drug involvement was a single cocaine purchase in July 2020. (Item 4 at 7) He stated that he no longer associates with past friends who engage in drug use and heavy alcohol use. He has not sought or received treatment or counseling for alcohol or drug use and has not participated in any alcohol or drug rehabilitation programs such as Alcoholics Anonymous or Narcotics Anonymous. (FORM Item 4 at 8-9)

### **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 SOR as amended alleges 11 delinquent debts (SOR ¶¶ 1.a-1.k). The security concern under this guideline 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. . . . 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The debt alleged in SOR ¶ 1.g is a duplicate of the debt in SOR ¶ 1.e. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in the applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I have resolved SOR ¶ 1.g in Applicant's favor.

The evidence reflects that Applicant made a recent payment on the debt alleged in SOR ¶ 1.a and had substantially reduced the balance. He has settled the debts alleged in SOR ¶¶ 1.b and 1.f and is making payments under a payment agreement on the debt alleged in SOR ¶ 1.c. He made single payments on the debts alleged in SOR ¶¶ 1.d, 1.e, and 1.k, but he submitted no evidence of any payment agreements for those debts. They are unresolved.

The debts alleged in SOR ¶¶ 1.d and 1.e and 1.h-1.k are unresolved and are sufficient to raise the two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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 credit counseling service, and there are clear indications that the problem is being resolved or is under control; 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) is not established. Applicant's delinquent debts are recent, numerous, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant's periods of unemployment from June 2017 to January 2018 and from October 2019 to April 2020 were conditions largely beyond his control. His unemployment from June 2017 to January 2018 was due to substandard performance and not because of conditions largely beyond his control. While he was unemployed in 2017, he acted responsibly by cashing in some investments. While he was unemployed in 2020, he acted responsibly by redeeming his vehicle after it was repossessed. He submitted no evidence of reasonable conduct regarding the debts alleged in SOR ¶¶ 1.h-1.k.

The record reflects a payment in February 2022 on the debt alleged in SOR ¶ 1.e, a payment in March 2023 on the debt alleged in SOR ¶ 1.d, and payments in April 2023 on the debts alleged in SOR ¶ 1.a and 1.k. All these payments were made after Applicant submitted his SCA and realized that his debts were an impediment to obtaining a security clearance. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicants who begin to address their security-significant conduct only when their personal interests are at stake may be lacking in judgment and reliability. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

AG ¶ 20(c) is not established. Applicant submitted no evidence of counseling. He has not yet reached the point where there are "clear indications" that his financial problems are being resolved.

AG ¶ 20(d) is established for the debts in SOR ¶¶ 1.b and 1.f, which have been settled, and the debts in SOR ¶¶ 1.a and 1.c, which are being resolved. Although Applicant claimed that the debt in SOR ¶ 1.h was paid, he provided no documentation to support his claim. When an applicant claims that a debt is resolved, it is reasonable to expect him or her to present documentary evidence supporting that claim. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

Applicant bears the burdens 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). Applicant has made some progress in resolving his delinquent debts. However, he has been employed for more than three years. When he was interviewed in February 2021, he was earning \$140,000 per year. However, despite his steady income, he has submitted no evidence of a reasonable plan for resolving the debts alleged in SOR ¶¶ 1.d-1.e and 1.h-1.k.

### **Guideline G, Alcohol Consumption**

The SOR alleges that Applicant consumed alcohol, at times in excess and to the point of intoxication, from January 2013 to at least March 2018 (SOR ¶ 2.a) and that he was charged with DUI in July 2010 (SOR ¶¶ 2.b).

The concern under this guideline is set out 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 evidence establishes the following disqualifying conditions under this guideline:

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

AG ¶ 22(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 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; and

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.



Both mitigating conditions are established. Applicant's DUI was in July 2010 and has not recurred. He terminated his excessive alcohol consumption in March 2018.

### **Guideline H, Drug Involvement and Substance Misuse**

The SOR alleges that Applicant used inhalants with varying frequency from September 2017 to about January 2020 (SOR ¶ 3.a), used cocaine with varying frequency from July to November 2017 (SOR ¶ 3.b), and used tetrahydrocannabinol (THC) with varying frequency from about August 2017 to November 2017 (SOR ¶ 3.c). The security concern under this guideline is set out in AG ¶24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Applicant's admissions establish two disqualifying conditions under this guideline: AG ¶ 25(a) ("any substance misuse (see above definition)"); and AG ¶ 25(c) ("illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia"). AG ¶ 25(c) is not applicable to nitrous oxide ("laughing gas"), because possessing it is not illegal. It is a medication regulated by the Food and Drug Administration and is not authorized for recreational purposes. It is frequently contained in pressurized containers, such as the containers of whipping cream used in this case.

The following mitigating conditions are potentially applicable:

AG ¶ 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 26(b): the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

- (1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;  
and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

AG ¶ 26(a) is established. Applicant purchased cocaine one time in July 2020, after he began working for a defense contractor in April 2020 but before he submitted an SCA. He used nitrous oxide in December 2020, after he submitted his SCA, and was on notice that substance misuse was an impediment to holding a security clearance. However, almost three years have elapsed since his last substance misuse, indicating that his claimed change of lifestyle was genuine.

AG ¶ 26(b) is established. Applicant no longer associates with users of illegal drugs. In his SCA, his responses during an interview by a security investigator, and in his answers to DOHA interrogatories, he stated his intent to abstain from all drug involvement, although he did not specifically acknowledge that any future drug involvement or misuse is grounds for revocation of national security eligibility.

### **Guideline J, Criminal Conduct**

The SOR alleges Applicant's DUI in 2010 (SOR ¶ 4.a) and the drunken altercation between Applicant and his then cohabitant in 2014 (SOR ¶ 4.b). The concern under this 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."

The evidence establishes the disqualifying condition in AG ¶ 31(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 following mitigating conditions are potentially applicable:

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; and

AG ¶ 32(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.

Both mitigating conditions are established. The two alcohol-related incidents are mitigated by the evidence of Applicant's decision to stop his alcohol abuse and the passage of time without recurrence.

### **Whole-Person Concept**

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 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 have incorporated my comments under Guidelines F, G, H, and J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to question him or 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, G, H, and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his excessive alcohol use, drug involvement, and criminal conduct, but he has not mitigated the security concerns raised by his delinquent debts.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.c:	For Applicant
Subparagraphs 1.d and 1.e	Against Applicant
Subparagraphs 1.f and 1.g:	For Applicant
Subparagraphs 1.h-1.k:	Against Applicant

Paragraph 2, Guideline G (Alcohol Consumption):	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Paragraph 3, Guideline H (Drug Involvement):	FOR APPLICANT
Subparagraphs 3.a-3.c:	For Applicant
Paragraph 4, Guideline J (Criminal Conduct):	FOR APPLICANT
Subparagraphs 4.a and 4.b:	For Applicant

**Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge