



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 22-00995  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

08/16/2023

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**Decision**

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MASON, Paul J., Administrative Judge:

Applicant’s evidence in mitigation does not satisfactorily rebut the continuing security concerns raised under the guideline for financial considerations. Eligibility for security clearance access is denied.

**Statement of the Case**

On March 30, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain his security clearance required for a position with a defense contractor. On May 28, 2020, he provided a personal subject interview (PSI) to an investigator from the Office of Personnel Management (OPM). The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) could not make the affirmative findings required to continue a security clearance, and issued to Applicant a Statement of Reasons (SOR), dated August 19, 2022, detailing security concerns raised by financial considerations (Guideline F). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on June 8, 2017.

Applicant provided his answer on August 23, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 9, 2023, for a hearing on June 30, 2023. The hearing was held by TEAMS video teleconference as scheduled. Without objection, I entered the Government's seven exhibits (GE) 1-7 into the record. Applicant testified. He submitted two post-hearing exhibits (AE A-B) that were entered into evidence without objection. DOHA received the transcript (Tr.) on July 13, 2023. The record closed on July 21, 2023.

### **Rulings on Procedure**

On June 14, 2023, pursuant to ¶ E.3.1.13 of DoD Directive 5220.6, the Government moved to amend the SOR by adding an additional guideline and three factual allegations as follows:

¶ 2. Guideline G: Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and raise questions about an individual's reliability and trustworthiness. Three allegations under this guideline are:

2.a. On about June 13, 2015, you were arrested in Baltimore County, Maryland and charged with driving while under the influence of alcohol (DUI).

2.b. On or about September 26, 2015, you were arrested in Baltimore County, Maryland and charged with driving while under the influence of alcohol (DUI).

2.c. On or about April 23, 2023, you were arrested in Baltimore City, Maryland and charged with driving while under the influence of alcohol (DUI).

In Applicant's response to the amended SOR dated June 23, 2023, he admitted the three allegations (SOR ¶¶ 2.a, 2.b, and 2.c) under SOR ¶ 2 (Alcohol Consumption), and provided his signature.

### **Findings of Fact**

The SOR contains 16 delinquent account allegations and two allegations of failing to file federal and state tax returns for tax years 2013 through 2020. There are ten student loan accounts, and the remaining accounts are commercial and one medical account. The total amount of debt is about \$70,841. Applicant admitted the delinquent accounts except SOR ¶ 1.m, explaining that he was making payments to this collection agency. He denied SOR ¶¶ 1q and 1.r, explaining that he completed the 2020 federal and state tax returns and was waiting on information concerning the other listed years. The Government credit bureau reports confirm that he owes the debts listed in the SOR.

Those debts became delinquent between March 2016 and July 2019. (GE 3, 4, 5, and his April 2022 Answer to SOR) The information that he provided in his March 2020 e-QIP (GE 1), his May 2020 PSI (GE 2), and his testimony at the June 2023 hearing, establish the allegations under SOR ¶¶ 1.q and 1.r. The alcohol consumption allegations are supported by the state criminal record printouts (GE 6), the Defense Information System for Security (DISS, GE 7), together with Applicant's testimony.

Applicant is 35 years old. He has never been married. He received his high school diploma in 2006. He has been living with a roommate since October 2019 (GE 1 at 25)

According to his March 2020 security clearance application, Applicant has been employed as a functional analyst since March 2020. From June 2019 to March 2020, he was a floor manager. From October 2018 to June 2019, he held jobs in information technology. From September 2017 to October 2018, he was a site supervisor. From August 2006 to August 2017, Applicant was an Honor Guard Specialist in the State National Guard and a clerk in the Army Guard Reserve. (GE 1 at 12-20) He provided information about his two DUI misdemeanor convictions in 2015 (GE 1 at 34-39) and not filing his state tax returns for 2013 through 2020. He did not mention his missing federal tax returns which he did not file for the same period. See GE 1 at 43. He recalled being investigated for a security clearance while he was in the National Guard (2007 to 2015), and received a security clearance but does not recall when. (GE 1 at 41)

## **Financial Considerations**

The record evidence indicates that Applicant's financial problems began when he stopped filing his income tax returns in 2013. He indicated that he could no longer afford to pay his tax preparer. He exacerbated his financial troubles by accumulating two DUI offenses in 2015, then one more in April 2023. (GE 2 at 6; GE 6; GE 7; Tr. 32-37)

SOR ¶ 1.a is a student loan account that was opened in 2008 and became delinquent in March 2016. The other nine student loan accounts (SOR ¶¶ 1.b, 1.e, 1.f, 1.h, 1.i, 1.j, 1.l, 1.n, and 1 p) were opened about the same time and became delinquent in March 2016. (GE 3 at 12-14) Regarding the delinquent student loan accounts, Applicant testified that he was in discussions with lawyers who informed him that the school (where he was receiving his education in 2008 and 2009) lost their accreditation. Applicant learned that the school was charging military personnel more than other enrollees. He implied that a large amount of time had passed since 2008 because he had repeatedly placed the student loans in forbearance to allow him additional time to accumulate enough money to repay the loans. (Tr. 22-24) Since he opened the loan accounts, he has made approximately \$100 in payments towards repayment of the loans. (Tr. 37)

SOR ¶ 1.c is a car loan that was opened in 2015 and became delinquent in February 2018. (GE 3 13-14) In his March 2020 PSI, Applicant explained that the car was stolen, and he was unable to retrieve the car from impound. He stated that he would try to settle the account in September 2020. (GE 2 at 9) Applicant testified that the account was still unpaid because he was trying to pay off his smaller accounts first. (Tr. 24) The only documented confirmation that Applicant paid off smaller accounts is satisfaction of the AE A account.

SOR ¶ 1.d is payday loan where Applicant used his car as collateral for a loan. (GE 2 at 7) The past-due debt became delinquent in July 2016. (GE 3 at 14; Tr. 48-49)

SOR ¶ 1.g is an account for a car loan that was opened in 2015 and became delinquent in August 2019. (GE 3 at 16) Applicant testified that he has taken no action on this loan. (Tr. 24)

SOR ¶ 1.k represents an apartment rental account that became delinquent in March 2016. In March 2020, Applicant indicated to the investigative agent that his roommate lost his job and could not pay his portion of the rent. He planned to establish a payment arrangement in July 2020. Applicant testified that he is still trying to obtain the delinquent balance from his roommate. (GE 2 at 9; Tr. 26)

SOR ¶ 1.m represents two credit-card accounts that belong to the same creditor. Applicant mistakenly believed that the creditor had combined the accounts. (Tr. 37) The documentation that shows that Applicant voluntarily paid off the first account in August 2022, because the account numbers of AE A match those of the May 2020 credit bureau report (CBR). (GE 3 at 19) He provided information about the second account which apparently shows that a judgment was taken against him, showing that his wages have been garnished since January 2023 at \$75 a month. As of the end of June 2023, AE B indicates that Applicant still owed \$455 on the second account. (Tr. 37-38)

SOR ¶ 1.o is a medical account that became delinquent in July 2019. Applicant received medical treatment for his elbow, but did not have the insurance or money to pay. He intended to set up a payment plan in August 2020 to pay off the debt. As of the June 30, 2023 hearing, Applicant had taken no action to pay off the debt. (GE 2 at 8; Tr. 26-27)

Even though Applicant denied SOR ¶¶ 1.p and 1.r, claiming that he filed several tax returns, he provided no documentation, i.e., tax transcripts or processed tax returns verifying that any federal or state returns were filed. (Tr. 32-37) Because there is no verification that returns were filed, SOR ¶¶ 1.p and 1.r. are resolved against Applicant. With the exception of SOR ¶ 1.m, I find the remaining delinquent accounts against Applicant as well.

## **Alcohol Consumption**

Applicant began using alcohol when he was 18 or 19 years old. (circa 2007) He believed he became intoxicated after two mixed drinks. He would usually drink on the weekends.

In June 2015 (SOR ¶ 2.a), Applicant was at a friend's house drinking, and drove to pick up another friend at the bus station. He got lost and drove the wrong way on a street. He was stopped by a police officer because of an expired emissions sticker. When Applicant told the officer that he had been drinking, he was given a breath test that he failed. He was charged with DUI at the police station. Before his court appearance, he completed 10 to 15 Alcoholics Anonymous (AA) meetings and had points taken away from his driver's license. He received probation before judgment. (GE 2 at 4)

While fulfilling the conditions of the June 2015 DUI, Applicant was arrested a second time for the same offense in September 2015. (SOR ¶ 2b) He had consumed one or two mixed drinks while celebrating the return of a friend from overseas. During his drive to pick up his friend, he hit another car in the rear. Applicant failed the breath test administered by a police officer and was arrested for DUI. When asked why he was driving, Applicant replied, "I was not thinking." (GE 2 at 4-5) He entered inpatient treatment for three days; then he attended 26 weeks of AA. He received a certification for the inpatient treatment and AA attendance. He returned to court on May 3, 2016, and received a 20-day sentence, which he completed by serving 10 weekends in jail. He was put on probation for one year and his driver's license was suspended until February 2017. (GE 2 at 4-5)

On the day before his arrest for DUI on April 23, 2023 (SOR ¶ 2.c), Applicant woke up early because he could not sleep. On the day of the arrest, he was at a friend's house watching a boxing match. He had consumed three or four mixed drinks. He left his friend's house and started driving home. On his way, he got tired and decided to pull over on the berm of the road. Apparently, the road shoulder was wet and the car began to slide farther away from the road. Even though Applicant tried to correct the direction of the car, it eventually slid into a ditch. A police officer stopped and asked him to take a breath test. Applicant refused. The officer took him to the police station and charged him with DUI. (GE 7; Tr. 29-30)

Since the April 2023 DUI, Applicant has resumed AA meetings every two weeks. He voluntarily installed an interlock device on his car. He is seeking therapy and was referred to websites to fill out forms. He provided no documentation to support his efforts to get therapy. In a change of his lifestyle, he has not consumed any alcohol since April 23, 2023, as he drinks water instead, and his intentions are to remain

abstinent in the future. On July 24, 2023, Applicant was scheduled to return to court for further proceedings regarding the April 2023 arrest. (Tr. 41-45)

Applicant's alcohol use caused him to lose his driver's license for a year in 2016, one of the terms of his sentence for the September 2015 DUI. (SOR ¶ 2.b) (GE 2 at 5) He was separated from his State National Guard job in August 2017 for the SOR ¶ 2.b DUI in September 2015, and he received a General Discharge from the National Guard in August 2017. (GE 2 at 4; Tr. 50)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with common sense and the general factors of 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(d) 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

### **Analysis**

#### **Guideline F, Financial Considerations**

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.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local tax as required.

Adverse evidence from credit reports can usually meet the Government's obligation of proving delinquent debts. See, e.g., ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) The Government credit reports establish that all the debts listed in the SOR have been delinquent since between March 2016 and July 2019. In March 2020, May 2020, April 2022, and June 2023, Applicant was placed on notice that his financial delinquencies and his repeated failure to file his federal and state tax returns from 2013 through 2020 raised serious concerns to the Government. As of the close of the record on July 21, 2023, the only documented account that Applicant paid was one account under SOR ¶ 1.m. Though the other SOR ¶ 1.m account became a judgment, followed by garnishment of Appellant's wages. AG ¶¶ 19(a) and 19(c) apply. AG ¶ 19(b) applies because of Applicant's lack of documented action in addressing 15 of the remaining 16 delinquent accounts listed in the SOR. AG ¶ 19(f) applies based on the lack of documentation that indicates that Applicant has filed the missing federal and state tax returns.

AG ¶ 20. Conditions that could mitigate security concerns include:

- (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;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20 (a) does not apply since Applicant still owes more than \$65,000 to 15 creditors or collection agencies. With no discernible changes in his financial practices, they will probably continue into the future. Applicant's failure to take charge of his delinquent debt responsibilities continues to raise doubts about his reliability and judgment.

No mitigation is available for Applicant under AG ¶ 20(b). He has had uninterrupted employment since 2007. When he stopped filing his federal and state tax returns in 2013, he was working as an Honor Guard with the State National Guard and he was also employed as an Army clerk for the Guard. He may not have been paid the level of wages that he was entitled, but he should have made the appropriate adjustments to his finances so he could continue to dutifully file his tax returns as required under the United States (US) Tax Code, while handling his other delinquent debts. By not acting responsibly under the circumstances to address his financial issues, AG ¶ 20(b) cannot be applied under these circumstances.

When an applicant is having problems in paying his debts in a timely manner, he should seek help through some kind of financial counseling. Based on the lack of financial counseling or evidence of a written budget to monitor his earnings and expenditures, both the first and second prongs of AG ¶ 20(c) must be removed from favorable consideration. Fifteen of Applicant's 16 delinquent debts are not being resolved or under control. AG ¶ 20(d) does not apply because Applicant is not engaged in a good-faith effort to repay his creditors. Though Applicant is paying off the second creditor through garnishment, at least the creditor is receiving some reimbursement for having initially advanced him credit in good faith. SOR ¶ 1.m is found in Applicant's favor.

### **Alcohol Consumption**

The security concerns of the guideline for alcohol consumption are set forth 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.



AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying include:

(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.

Between 2015 and April 2023, Applicant was convicted of three DUI offenses. Before each of the three alcohol-related incidents, Applicant had consumed up to three mixed drinks. During the first incident in June 2015, Applicant became lost and found himself driving the wrong way. Initially, he was stopped for an expired emissions sticker. While he was completing the terms of his sentence for the first DUI, after consuming at least two mixed drinks, Applicant struck another car from behind in September 2015. He was arrested and charged with DUI. In April 2023, while consuming three mixed drinks as he was watching a boxing match at a friend's house, Applicant decided to drive home. Feeling too tired to continue his trip, he stopped on the side of the road. Not realizing how far off the road he was, his efforts to get the car in a more stable position were futile and the car slid into a ditch. AG ¶ 22(a) applies because of the three alcohol-related incidents. AG ¶ 22(c) applies because of the impaired judgment which Applicant exhibited in the three alcohol-related incidents, even though there has been no diagnosis of an alcohol use disorder.

AG ¶ 23 describes 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; and

(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(a) does not apply because less than four months has passed since Applicant's most recent DUI. The alcohol-related incident did not occur under unusual circumstances because it had happened on two previous occasions. Applicant lost his

driver's license for a year following his second DUI in September 2015. In August 2017, he received a General Discharge from the Maryland National Guard as a result of his second DUI in September 2015. The recency of the April 2023 alcohol-related incident continues to cast doubt on Applicant's judgment and reliability.

AG ¶¶ 23(b) does not apply. Though Applicant testified that he has been abstinent since his April 2023 DUI arrest, he has failed to convince me that he has discontinued his alcohol consumption. He has presented insufficient evidence demonstrating changed circumstances conducive of an alcohol-free lifestyle. His commitment to AA is minimal. While he indicates he has been investigating therapy, he is still not enrolled in any program.

### **Whole-Person Concept**

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

In Guideline F cases, the DOHA Appeal Board has repeatedly held that, to establish his case in mitigation, an applicant must present a "meaningful track record" of debt repayments that result in debt reduction. *See, e.g.,* ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007) While an applicant is not required to show that every debt listed in the SOR is paid, the applicant must show that he has a plan for debt resolution and has taken significant action to implement the plan. *See, e.g.,* ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006) From the record presented, Applicant has no plan in place and has furnished no evidence of even sporadic payments on 15 of the 16 past due accounts. After a full review of the entire record from an overall common-sense point of view, Applicant's ongoing financial problems have not been mitigated.

Applicant has not mitigated the alcohol consumption guideline either. After committing a second DUI in September 2015 under essentially the same circumstances as his June 2015 DUI, and having lost his license for a year, and being required to

separate from the National Guard in August 2017 with a General Discharge, Applicant should have taken the necessary steps to prevent the same kind of event from recurring. However, he faces the same negative outcome when he is sentenced for the latest April 2023 DUI. Judging by the totality of the circumstances, Applicant has not overcome the ongoing security concerns arising from the guidelines for financial considerations and alcohol consumption.

### **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.l:  | Against Applicant |
| Subparagraph 1.m:         | For Applicant     |
| Paragraph 2, Guideline G: | AGAINST APPLICANT |
| Subparagraphs 2.a-2.c:    | Against Applicant |

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge