



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



In the matter of:)
)
) ISCR Case No. 22-02087
)
Applicant for Security Clearance)

Appearances

For Government: Karen A. Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

05/16/2024

Decision

HALE, Charles C., Administrative Judge:

Applicant mitigated the security concerns under Guidelines G, alcohol consumption, and J, criminal conduct, but he did not mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On January 25, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Guideline J, and Guideline G. Applicant responded (Answer) to the SOR on February 3, 2023, and requested a hearing before an administrative judge. The case was assigned to me on November 6, 2023.

The hearing convened as scheduled on December 8, 2023. Government Exhibits (GE) 1 through 12 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through M, which were character statement and were admitted without objection. I held the record open until December 22, 2023, and received

AE N through Q, which were admitted without objection. I received the transcript (Tr.) on December 22, 2023.

Findings of Fact

Applicant is a 47-year-old employee of a government contractor. He worked for his current employer since 2022 under various contracts. He currently works as a network engineer for a Federal department and holds a public trust position. He has attended some college and has his IT certification in system administration. He is married and has two children. (Tr. at 31-37; Answer; GE 1) He is well regarded as evidenced by the numerous character letters.

Applicant admits all of the Guideline F allegations with explanations. He admits the incident that forms the Guideline J allegation and the cross-alleged Guideline G allegation but disputes that he has a problem with alcohol. (GE 1; GE 2; GE 4; GE 12; Answer.)

Financial

Applicant in 2008 decided to enter the real estate market using a \$30,000 inheritance to purchase properties. He bought six condominiums putting \$5,000 down on each property under a limited liability company which he “ran them pretty much like a game of monopoly.” (Tr. at 37-38.) He attributed his financial distress to renting to his family who did not pay and would not move out of the properties. (Tr. at 39, 72-73.) He filed for Chapter 7 Bankruptcy (SOR ¶ 1.c) in May 2010. The total debt discharged was valued at around \$1.6 million. He testified all his debts except for student loans were discharged. (Tr. at 30, 39, 41, 42; GE 4.) By 2010, given the difficulties he was having as a property manager, he had decided to get out of the real estate sector. He included these real estate debts in his Chapter 7 and Chapter 13 bankruptcies but offered no evidence these debts had been satisfied. (Tr. 65-67; GE 9.)

Applicant filed Chapter 13 bankruptcy in October 2020 (SOR ¶ 1.b) and the bankruptcy was dismissed in April 2021 because his spouse had not been included in the filing and it was refiled in April 2021 (SOR 1.a) and dismissed in July 2022. He filed another Chapter 7 bankruptcy in March 2023, which was dismissed in July 2023. The Government offered this bankruptcy as whole-person evidence. (Tr. at 16; GE 11.) He acknowledged receiving financial counseling as part of the bankruptcy process, “one at the beginning and one at the end.” (Tr. at 73-74.)

Applicant accrued a number of other debts from his time in the real estate market. He owes the Federal government \$6,080 (SOR ¶ 1.d) in back taxes. He acknowledged there were Federal tax delinquencies, but he was current on his Federal and state tax filings. (Tr. at 70-71.) In his Answer, he states he established a payment arrangement in February 2022, but testified there was no formal arrangement. He is letting his tax refunds take care of the tax debts. (GE 1, GE 2; Answer; Tr. at 79.) He owes his state \$4,728 (SOR ¶ 1.e) in back taxes. (GE 1, GE 2; GE 9; Answer.)

Applicant admits being sued by various homeowners and condominium associations for nonpayment of dues (SOR ¶ 1.g) in at least 11 separate civil actions since 2009. He said one of the liens was resolved but he did not provide the letter he referenced in his testimony. (Tr. at 66.) He has been the subject of at least four separate

foreclosure actions since 2009 (SOR ¶ 1.h) for properties he had invested in. There were two foreclosures in 2009, which were related to the rental properties, and two more in 2013 and 2017 respectively. He acknowledges one was for his current home, which he believes is the 2017 foreclosure. His monthly mortgage payment is \$1,800 a month. He believes he is just over a year behind on his mortgage payments. He is working a short sell now. He testified the lender “suspended [the foreclosure] until we find out if we can get a deal done with the short sell or a sell it [ourselves].” (Tr. at 62.) He offered images of his payment statement for his home mortgage that he is trying to bring into good standing. He did not offer evidence on the other mortgages noting “they’re still out there. You know, I don’t know. I honestly can’t answer that” as to the remaining three mortgages. (Tr. at 61-63, 74; AE P; AE P2.)

Applicant admitted he had an account charged off in the amount of \$221 (SOR ¶ 1.f). He testified he placed this debt in the Chapter 7 bankruptcy, SOR ¶ 1.b. This bankruptcy was dismissed. (Tr. at 57, 71.) Since 2009, Applicant has been sued eleven times (SOR ¶ 1.g) for failing to pay his homeowner and condominium association fees. He did not know why they are associated with him. (Tr. at 64-66; GE 9.) He said he had a letter stating one lien had been removed but offered no evidence payment or that there was an ongoing dispute. (Tr. at 66.)

Applicant testified that \$5,000 was fraudulently withdrawn from his bank account. He submitted a complaint to his bank, who investigated but did not find for him. The bank could not determine the nature of the withdrawals. He did not file a police report but did report the bank to the Better Business Bureau. He testified the local police would not take the report and he did not file a complaint with any Federal law enforcement agency. (Tr. at 46-48, 77-78.)

When Applicant left his position in 2021, he was making \$80,000 a year. The next contracts were for less, \$69,000 for one year, another for \$65,000, and his last contract before his current contract with the Federal agency was \$60,000. He is making \$77,000 under his current contract. (Tr. at 74-75.)

DUI and Alcohol

Applicant admits he was arrested in September 2021 and charged with driving under the influence (DUI) after he lost control of his vehicle and crashed into a tree. (Tr. at 81; GE 3.) He testified he suffered a concussion and injured both knees. (Tr. at 82.) He was administratively subject to an interlock device for one year because he had refused the breathalyzer test. He testified he went to trial a year later, and the case was resolved by probation before judgment (PBJ). He states the court required him to complete an online class, be subject to an additional year with an interlock device on his vehicle and be on probation until November 14, 2023. He notes he has not had previous driving incidents. He testified he no longer drinks and practices sobriety. (Tr. at 81-84; GE 3; AE N; AE O; AE Q.)

Policies

This case is adjudicated 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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 security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (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 income tax as required.

Applicant filed multiple bankruptcies. He owes both Federal and state taxes and has other unresolved debts. AG ¶¶ 19(a), 19(c), and 19(f) are applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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) 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

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

Applicant's poor financial situation is current and ongoing. The circumstances in his life have not changed such that it is unlikely to recur. Given these facts there is sufficient doubt concerning his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable to the SOR allegations.

The failure of Applicant's real estate ventures was not beyond his control. While filing for Chapter 7 bankruptcy was a responsible way to deal with the debts, his mismanagement of the properties was the cause of his financial problems. He did suffer periods of underemployment and unemployment and he cited without support that his online bank account had been accessed and funds withdrawn without his consent as evidence of circumstances beyond his control. However, an applicant must act responsibly given his or her circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct even if it may only provide for the payment of debts one at a time. ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008). In this matter, Applicant has established a history of repeated bankruptcy filings. Aside from the one payment history statement, AE P and AE P2, he has failed to resolve judgments and foreclosures against him, which does not constitute responsible behavior. ISCR Case No. 09-08462 at 4 (App. Bd. May 31, 2011). While he may have mitigated one of the four foreclosures, his repeated bankruptcy filings, delinquent debts, and unresolved judgments and foreclosures concerning his various properties demonstrate that he has not acted responsibly under the circumstances. AG ¶ 20(b) is not applicable to the SOR allegations.

Applicant's later bankruptcies in 2020 and 2021 were a continuation of his mismanagement of his finances (SOR ¶¶ 1.a and 1.b), which he had attempted to resolve in his initial bankruptcy in 2010 (SOR ¶ 1.c). His tax debts are unresolved. Despite being sued 11 times he has not resolved the issues with either the homeowner associations or the condominium associations (SOR ¶ 1.g) for failing to pay his homeowner and condominium association fees and he is the subject of multiple foreclosure actions (SOR ¶ 1.h). Applicant has passively waited for any tax refunds to resolve the Federal and state tax concerns (SOR ¶¶ 1.d and 1.e). The lone credit-card debt alleged, SOR ¶ 1.f, was charged off. I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his Federal and state taxes. While he received financial counseling as part of the bankruptcy process, there is no clear indication that his financial problems are being resolved or are under control. A security clearance adjudication is not a proceeding aimed at collecting an applicant's debts, but rather, a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness.

His financial issues since 2010 continue to cast doubt on his current reliability, trustworthiness, and good judgment. I am unable to find that Applicant acted responsibly under the circumstances. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). AG ¶¶ 20(c), 20(d), and 20(g) do not apply.

Guideline J, Criminal Conduct

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.” Applicant’s record of arrest and prosecution is sufficient to establish the following potentially disqualifying conditions under 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 relevant under 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

(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.

Sufficient time has elapsed since Applicant’s one criminal offense. He has changed his lifestyle such that it is unlikely that his alcohol-related misconduct will reoccur. He has complied with the terms of his sentence. The mitigating conditions are established.

Guideline G, Alcohol Consumption

The security 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.”

Applicant’s admissions and the documentary evidence establish two potentially disqualifying conditions under AG ¶ 32:

(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 following mitigating conditions are potentially relevant under 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;

(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; 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 acknowledges his alcohol problem. He has changed his lifestyle to make the behavior unlikely to reoccur. He has established three years of sobriety and abstaining from alcohol. He successfully completed his assigned classes and programs. He has demonstrated a clear and established pattern of abstinence and now presents a low risk.

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 have incorporated my comments under Guidelines F, G, and J in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations 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.h:	Against Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Charles C. Hale
Administrative Judge