



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-02941
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

08/15/2024

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On February 20, 2023, Applicant submitted a security clearance application (SCA). On February 22, 2024, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F (Financial Considerations), J (Criminal Conduct), G (Alcohol Consumption), and E (Personal Conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing (Answer) on March 4, 2024, and requested a hearing before an administrative judge. The case was assigned to me on May 20, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 21, 2024. I convened the hearing as scheduled on June 5, 2024. The

Government offered Government Exhibits (GXs) 1 through 11, which were admitted without objection. Applicant testified on his own behalf and offered Applicant Exhibits (AppX) A through Q, which were admitted without objection. DOHA received the transcript of the hearing (TR) on June 14, 2024. The record was left open until July 5, 2024, for the receipt of additional evidence. Applicant offered nothing further on his behalf. The record closed at that time.

### **Findings of Fact**

Applicant admitted to the allegations in SOR ¶¶ 1.a, 1.c~1.e, 2.a, 2.c, 3.a, and 4.a~4.c. He denied SOR allegations ¶¶ 1.b, 1.f, and 2.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 33-year-old employee of a defense contractor. He has been employed with the defense contractor since March of 2023. He is divorced, and has no children. Applicant was on active duty with the U.S. Navy from “September, 2010, to September, 2018.” He attributes his financial difficulties to his divorce and to being unemployed or underemployed since leaving active duty. (TR at page 14 line 13 to page 19 line 3.)

### **Guideline F: Financial Considerations**

1.a. Applicant admits he has a past-due debt to Creditor A in the amount of about \$6,269. Through the auspices of a debt consolidation service, he is addressing this debt, as evidenced by documentation from that debt consolidation service. (TR at page 19 line 7 to page 22 line 15, and AppX Q.)

1.b. Applicant initially denied a phone debt to Creditor B in the amount of about \$3,991. At his hearing, he averred that he would make further inquiries as to this debt, as it does appear as one of his accounts placed in collection on the Government’s September 2023 credit report. (TR at page 23 line 1 to page 24 line 10, at page 31 line 2 to page 32 line 9, and GX 4 at page 2.) Despite having a month to do so after his hearing, Applicant has submitted nothing further in this regard.

1.c. Applicant admits he has a past-due debt to Creditor C in the amount of about \$3,672. (TR at page 24 line 14 to page 25 line 1.) Despite having a month to do so after his hearing, Applicant has submitted nothing further in this regard.

1.d. Applicant admits he has a past-due collection account to Creditor D in the amount of about \$71. (TR at page 25 line 21 to page 26 line 7.) Despite having a month to do so after his hearing, Applicant has submitted nothing further in this regard.

1.e. Applicant admits he has a past-due debt to Creditor E in the amount of about \$474. (TR at page 26 line 8 to page 27 line 3.) Despite having a month to do so after his hearing, Applicant has submitted nothing further in this regard.

1.f. Applicant denies he has a past-due debt to Creditor F in the amount of about \$4,314. Through the auspices of a debt consolidation service, he is addressing this debt, as evidenced by documentation from that debt consolidation service. (TR at page 27 line 11 to page 29 line 9, and AppX Q.)

### **Guideline J: Criminal Conduct & Guideline G: Alcohol Consumption**

2.a. Applicant initially admitted that in June of 2009, he was charged with three levels of a burglary (two being felonies), and with Felony Theft of \$500. He, however, denies any criminal culpability. (TR at page 33 line 8 to page 39 line 5, and GX 9.) The case was dismissed without prejudice; and after fifteen years, it has yet to be prosecuted. No alcohol was involved.

2.b. Applicant denies that in December of 2014, he was arrested for a Battery of his former spouse. He admits punching a window during a domestic dispute, and that he was the one who called the police. (TR at page 39 line 9 to page 41 line 2.) No further action was taken regarding this arrest, an arrest that occurred nearly a decade ago. No alcohol was involved.

2.c. and 3.a. Applicant admits that in January of 2019, more than five years ago, he was arrested for a felony, driving under the influence (DUI) of alcohol, but pled guilty to a misdemeanor DUI. He was sentenced to 90 days of custody (but instead wore a SCRAM device that tests the presence of alcohol), placed on probation for three years, attended an alcohol education program, and paid court costs. Applicant consumes alcohol “maybe once every two weeks, on the weekend.” (TR at page 41 line 3 to page 45 line 17.)

### **Guideline E: Personal Conduct**

These allegations will be discussed in chronological order:

4.c. On his June 2019 SCA, Applicant answered “No” to “Section 15 – Military History . . . Discipline in the last 7 years.” He failed to disclose that he received non-judicial punishment (NJP) in December 2013 for making a false official statement, and for destruction of government property. Applicant avers that he “might have been speeding through [the SCA]. I don’t know. It did happen, though.” (TR at page 48 line 9 to page 49 line 7, and GX 10 at page 21.) I find this to be a willful falsification.

4.a. and 4.b. On his February 2023 SCA, Applicant answered “No” to “Section 22 – Police Record (EVER) Other than those already listed, have you EVER had the following happen to you? . . . Have you EVER been charged with any felony offenses?” (GX 1 at page 23.) As Applicant did disclose this alleged, 2009 felonious conduct on his March 2010 SCA (GX 11 at pages 27~29), he thought it “transferred” over from his prior SCA to his most recent SCA. (TR at page 46 line 2 to page 47 line 19.) As to allegation 4.a., I find no willful falsification or an attempt to withhold information, as the Government was aware of the alleged 2010 misconduct.

However, the same cannot be said as to the January 2019 felony DUI charge. Applicant avers, "I might have missed it." (TR at page 47 line 20 to page 48 line 8.) As to allegation 4.b., I find this to be a willful falsification.

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## 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.

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

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has about \$18,761 of alleged past-due debts. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial problems are ongoing. Although he can attribute his financial situation to a divorce, and to periods of unemployment and underemployment, Applicant has yet to address all of his delinquencies. Despite having a post-hearing month to do so, he still has about \$8,178 of past-due indebtedness, and has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has not been established. Financial Considerations is found against Applicant.

#### **Guideline J: Criminal Conduct**

AG ¶ 30 sets forth the security concerns pertaining to criminal conduct:

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.

AG ¶ 31 describes three conditions that could raise a security concern and may be disqualifying in this case:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant was convicted of misdemeanor DUI in 2019, and has prior arrests in 2009 and in 2014. The evidence establishes the above two disqualifying conditions.

AG ¶ 32 provides two conditions that could mitigate the above security concerns raised in this case:

(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 passed, more than five years, since Applicant's 2019 misdemeanor conviction. The evidence does establish mitigation under both of the above conditions. Criminal Conduct is found for Applicant.

### **Guideline G: Alcohol Consumption**

The security concern relating to the guideline for Alcohol Consumption 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 guideline at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. One condition may apply:

(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.

Applicant has a January 2019 alcohol-related arrest and subsequent conviction. These facts establish prima facie support for the foregoing disqualifying condition, and shift the burden to Applicant to mitigate those concerns.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Three conditions may apply:

(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's alcohol related conviction was more than five years ago. He is no longer on probation, he attended an alcohol education program, and his alcohol consumption is infrequent. Alcohol Consumption is found for Applicant.

### **Guideline E: Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Two are potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment



qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant falsified both his 2019 and 2023 SCAs as to his "Police Record." The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

Neither of these apply. Personal Conduct is found against Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F, G, J, and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant is respected in the workplace. He performs well at his job. (AppXs L~P.) However, overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations and Personal Conduct security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b~e:	Against Applicant
Subparagraph 1.f:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a~2.c:	For Applicant
Paragraph 3, Guideline G:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraph 4.a:	For Applicant
Subparagraphs 4.b. and 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 a security clearance. Eligibility for access to classified information is denied.

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Richard A. Cefola  
Administrative Judge