



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 12-05812
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

09/11/2015

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations), G (Alcohol Consumption), and J (Criminal Conduct). Applicant mitigated security concerns under Guidelines F and G and refuted the factual allegation under Guideline J. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 18, 2011. On November 6, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F, G, and J. The DOD acted under Executive Order 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on December 2, 2014, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 30, 2015, and the case was assigned to me on June 8, 2015. On June 18, 2015, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 11, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 8 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until August 21, 2015, to enable Applicant to submit additional documentary evidence. He timely submitted AX B, C, and D, which were admitted without objection. DOHA received the transcript (Tr.) on August 19, 2015.

### **Amendment of SOR**

At the hearing, Department Counsel moved to correct a typographical error in SOR ¶ 2.e by amending the last phrase of the allegation to read "as set forth in subparagraphs 1.a through 1.c above," in place of "as set forth in subparagraphs 1.b and 1.c above." I granted the motion. (Tr. 15.) However, the SOR was still incorrect as amended. Accordingly, on my own motion, without objection from either party, I have amended SOR 2.e to read, "as set forth in subparagraphs 2.a through 2.c above."

### **Findings of Fact**

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.a, 1.b, and 2.a-2.g. He denied SOR ¶ 3.a. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant served on active duty as an Army officer from June 1979 to June 1984. He resigned after he contracted a lung disease and lost part of a lung. He receives disability pay from the Veterans Administration. (Tr. 74.) He held a security clearance on active duty, retained it after leaving active duty, and is seeking to continue it.

Applicant is a 58-year-old employee of a federal contractor. He has worked for federal contractors since July 1999. (GX 1 at 9-11.) He previously was a vice-president of a federal contractor from June 2003 until 2010, earning about \$130,000 per year. In June 2010, his take-home pay was reduced to about \$6,000 per month. In June 2011, he was laid off. He held intermittent part-time consulting jobs until he began his current job in December 2012. (Tr. 27-29, 38.)

Applicant married in June 1979 and divorced in December 1988. He married his current wife in July 1989. He has a 19-year-old daughter from his first marriage. He and his current wife have a 12-year-old son. They also had a daughter, who was killed in a car accident in November 2008, when she was 17 years old. His wife has a 23-year-old daughter from a previous relationship.

In October 1989, Applicant was charged with driving while intoxicated (DWI). He received probation before judgment, which he successfully completed. (GX 1 at 29-30.) In January 1990, he was charged with another DWI, convicted, and fined. (GX 1 at 30.)

After the January 1990 incident, Applicant abstained from drinking alcohol until November 2008. However, after his daughter's untimely death, he began consuming increasing amounts of alcohol on a daily basis until he reached the point where he would "drink to normalcy," meaning that he would drink enough to stop shaking. (Tr. 54-55.) He voluntarily obtained outpatient counseling for alcohol abuse from August 2010 to March 2011 and inpatient treatment from June 2011 to July 2011. He successfully completed both programs. Both programs were treatment programs rather than diagnostic programs. Consequently, he was not diagnosed as alcohol dependent or an alcohol abuser during either treatment, but he concluded, based on self-evaluation, that he was an alcoholic. (GX 1 at 32-33; GX 3 at 28.) He was his employer's facility security officer, and he self-reported his problems with alcohol. His self-reporting triggered the SCA submitted in November 2011. (Tr. 28.)

Applicant abstained from alcohol from August 2010 to November 29, 2012, the anniversary of his daughter's death. On that day, he was still grieving the loss of his daughter. He also was depressed because he was in financial distress, having been laid off since June 2011, and the mortgage on his home was being foreclosed. His wife had left him in September 2012. After drinking until he passed out on the previous night, he tried to move a truck and trailer for a friend at a gas station and hit the bumper of another car. He pleaded guilty to driving under the influence of alcohol (DUI). He was sentenced to 60 days in jail (suspended), fined \$215, and placed on probation for 18 months. (Tr. 33,59, 64; GX 3 at 19.<sup>1</sup>) His probation was abated in July 2014. (AX A, Attachment 6.)

In response to DOHA interrogatories in September 2014, he stated that he was diagnosed as "alcohol dependent" in June 2010, diagnosed with "alcoholism" in June 2011, and diagnosed as an "alcoholic" in January 2012. (GX 2.) At the hearing, he explained that the medical professionals did not diagnose him as alcohol dependent or an alcohol abuse, but that he diagnosed himself as an alcoholic. (Tr. 56.)

Applicant began receiving treatment from a psychiatrist in February 2012, who initially diagnosed him as having an adjustment disorder with depressed and anxious mood and alcohol dependence in early remission. He relapsed in September 2012 and was admitted to a medical center for four days of alcohol detoxification. He received six months of group counseling for his alcohol use from a licensed clinical social worker from January to July 2013. As of the date of the hearing, he continued to see his psychiatrist, who opined that his prognosis is "very good." (AX D.)

Applicant has abstained from alcohol since late November 2012, attends Alcoholics Anonymous (AA) about three times a week, has an AA sponsor, and holds service positions in AA. He continues to receive psychiatric counseling for alcohol use, grief, and post-traumatic stress disorder (PTSD) related to the death of his daughter. (Tr. 74.) He participates in an organization for grief management and maintains a

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<sup>1</sup> In GX 3, Applicant stated that this incident occurred in November 2014, but at the hearing he testified that the incident was in 2012. (Tr. 63.) The 2014 date was obviously wrong, because GX 3 was signed by Applicant in April 2014.

vigorous physical exercise program. (AX A, Attachment 5.) He has remained separated from his wife, because she also has alcohol problems. (Tr. 33.)

Applicant and his wife filed a petition for Chapter 13 bankruptcy in April 2011, after his salary was substantially reduced. He chose to file a bankruptcy petition to reduce his vulnerability to coercion or pressure. (Tr. 27.) His bankruptcy plan included debts in excess of \$120,000. The mortgage loan on his principal residence was not included in the bankruptcy. He completed the financial counseling required by the bankruptcy court and has been making the required payments to the bankruptcy trustee. His monthly payments were \$250 for months 1 through 27, \$632 for months 28 through 37, and \$918 for months 38 through 60. In November 2012, his monthly payments were increased to \$1,183. He will complete the repayment schedule in April 2016. (GX 4; AX B; AX C.)

Applicant's December 2011 credit bureau report (CBR) reflected that his mortgage loan was current. (GX 5 at 6.) He had been withdrawing funds from his 401(k) retirement account to make the payments. (Tr. 39.) However, his January 2014 CBR reflected that he was more than 180 days past due on his payments and that foreclosure had been started. (GX 6 at 2.) He testified that he tried to negotiate a payment plan or a loan modification and offered the lender a deed in lieu of foreclosure, but to no avail. (Tr. 46-48.) The mortgage was foreclosed and the property was sold in May 2014 for \$353,000. The lender cancelled the deficiency of \$88,408, and Applicant reported the cancelled debt on his income tax return for tax year 2014. (AX A, Attachments 3 and 4).

Since beginning his current job in December 2012, Applicant has earned about \$137,000 per year, plus bonuses. (Tr. 40.) He has accumulated about \$37,000 in his 401(k) retirement plan. (AX A, Attachment 2; Tr. 29.)

### **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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” See 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

## **Analysis**

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

The SOR alleges that Applicant filed a Chapter 13 bankruptcy petition in April 2011, which is ongoing (SOR ¶ 1.a), and that he is past due on a mortgage loan in foreclosure (SOR ¶ 1.b). The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by the documentary evidence admitted at the hearing, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions under this guideline are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, not yet fully resolved, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant has not established that his income reduction and eventual loss of employment in June 2011 was independent of his self-

reported alcohol problems. His marital breakup did not occur until after he filed his petition for bankruptcy.

AG ¶ 20(c) is established. Applicant completed the counseling required by the bankruptcy court. He has complied with the Chapter 13 bankruptcy payment plan and is within seven months of completing it. The delinquent mortgage loan was resolved by foreclosure and forgiveness of the deficiency after foreclosure.

AG ¶ 20(d) is established. Applicant is resolving the debts included in the bankruptcy by complying with the payment plan. He made a good-faith effort to avoid foreclosure of his mortgage loan by maintaining contact with the lender, withdrawing funds from his retirement in an attempt to keep his payments current, seeking a loan modification, and offering a deed in lieu of foreclosure.

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

The SOR alleges that Applicant was diagnosed as an alcoholic in January 2012 and June 2011 (SOR ¶¶ 2.a and 2.b) and diagnosed as alcohol dependent in July 2010 (SOR ¶ 2.c). It alleges that he continued to consume alcohol after a diagnosis of alcohol dependence or alcoholism (SOR ¶ 2.e). Finally, it alleges that he was charged with DUI in November 2012 and convicted in April 2013 (SOR ¶ 2.d), arrested for DUI in January 1990 (SOR ¶ 1.f), and arrested for of DUI in October 1989 (SOR ¶ 2.g).

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 following disqualifying conditions under this guideline are potentially relevant:

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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

AG ¶ 22(c): habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

AG ¶ 22(d): diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

AG ¶ 22(e): evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and

AG ¶ 22(f): relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

AG ¶ 22(a) is established by Applicant's record of convictions for DUI and DWI. AG ¶ 22(c) is established by his admission of repeated binge drinking. AG ¶ 22(d) is established by the diagnosis of "alcohol dependence - early remission" by Applicant's psychiatrist. AG ¶ 22(f) is established by Applicant's relapse in September 2012 after his psychiatrist diagnosed him with alcohol dependence.

AG ¶ 22(e) is not established, because there is no evidence of a diagnosis from a qualified medical professional or licensed clinical social worker during Applicant's treatment in 2010 and 2011. His first diagnosis was by his psychiatrist in February 2012. His self-diagnosis of "alcoholism" is insufficient to establish this disqualifying condition.

The following mitigating conditions are potentially relevant:

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 good judgment;

AG ¶ 23(b): the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser); and

AG ¶ 23(d): the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

AG ¶ 23(a) is established. The first prong of this mitigating condition ("so much time has passed") focuses on whether the conduct was recent. There are no "bright line" rules for determining when conduct is "recent." The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).



Applicant has abstained from alcohol for almost three years, which is a “significant period of time.” He attends AA meetings frequently, has a sponsor, and holds a service position within the AA community. His depression is under control, to the extent that he no longer requires medication. He is active in an organization devoted to addressing grief issues. He has successfully completed the probation imposed for the November 2012 incident. He has held a meaningful job since December 2012 and is resolving his financial problems.

AG ¶ 23(b) is established. Applicant has acknowledged his alcoholism, taken substantial steps to overcome it, and has established a pattern of abstinence.

AG ¶ 23(d) is established. Applicant successfully completed outpatient treatment in March 2011 and inpatient treatment in July 2011. He has established a pattern of abstinence and is active in AA. He has an ongoing relationship with a psychiatrist, who has given him a favorable prognosis.

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

The SOR does not allege Applicant’s arrests and convictions for alcohol-related offenses under this guideline. It alleges only that Applicant is currently on supervised probation for the November 2012 incident (SOR ¶ 3.a). His probation was abated in July 2014. Thus, this allegation in the SOR has been refuted. The alcohol-related conduct underlying his arrests, convictions, and probation is addressed in the above discussion of Guideline G.

### **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(a):

- (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, and J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant was candid, sincere, and remorseful at the hearing. He served honorably as an officer in the U.S. Army for five years, when he became physically incapable of serving. He has worked for defense contractors and held a security clearance from July 1999 to June 2011. He is determined to overcome the PTSD triggered by the tragic death of his daughter and to gain control of his life-long alcohol dependence, which is now in remission. He is financially stable.

After weighing the disqualifying and mitigating conditions under Guideline F, G, 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 financial problems and alcohol dependence. He has refuted the allegation that he is on supervised probation. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

### **Formal Findings**

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

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.b: For Applicant

Paragraph 2, Guideline G (Alcohol Consumption): FOR APPLICANT

Subparagraphs 2.a-2.g: For Applicant

Paragraph 3, Guideline J (Criminal Conduct): FOR APPLICANT

Subparagraph 3.a: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman  
Administrative Judge