



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



In the matter of:)	
)	
)	ISCR Case No. 12-10453
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

07/24/2015

Decision

LYNCH, Noreen A, Administrative Judge:

On January 29, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a review based on the written record in lieu of a hearing. The case was assigned to me on July 13, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated April 27, 2015.¹ Applicant received the FORM on May 6, 2015. Applicant did not submit any information in

¹The Government submitted eight items for the record.

response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted and denied the factual allegations under Guideline F (Financial Considerations), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct).

Applicant is a 48-year-old employee of a defense contractor. He obtained his GED in 2001. Applicant is married and has children. He has worked for his current employer since 2012. (Item 3) This is his first application for a security clearance.

Financial

The SOR alleges that Applicant failed to file his federal income tax returns for tax years 2003 through 2010; that he has a 2011 tax lien in the amount of \$71,103; that he failed to file his state tax returns for tax years 2003 through 2010; and that he is indebted to the state for delinquent tax years 2003 through 2008 in an amount of approximately \$4,800. The SOR alleges six collection accounts totaling approximately \$4,000. (Item 1)

Applicant admits that he did not file his federal or state income tax returns for tax years in question. He acknowledges that these were poor decisions. (Item 4) He denies the responsibility for debts 1.e through 1.k. He stated that "vehicle insurance" was responsible for the debts. There is nothing in the record to show that Applicant has addressed the collection accounts. He has not sought financial counseling or debt consolidation. (Item 4) Applicant did not submit any documentation that he filed the returns or paid the income taxes due. Applicant claims that he filed the tax returns in March 2012 after realizing that he needed to grow up and straighten his life. He did not submit any evidence to confirm his assertion. There is no documentation to show that Applicant has paid or resolved any of the state or Federal taxes owed. Applicant noted on his completed 2012 SF-86 that he thought that taxes were taken out by the contractor who employed him. He also stated that he had been in touch with the IRS and was seeking advice from a tax attorney to resolve the issues. The record does not contain any documentation to support this claim, and Applicant did not submit any information in response to the FORM.

Applicant denied that he is indebted to the Federal government for a 2011 tax lien (1.b). He states that as of August 2014 he is paying bi-weekly and will continue to do so until the debt is paid. Applicant submitted a release of levy, dated August 22, 2014, but the garnishment of his salary does not indicate that it is for the lien alleged in question. (Item 2) The federal tax lien of \$71,103 is verified in the document marked Item 6. There is no information in the record that shows a payment agreement with the IRS for the federal lien.

Personal Conduct

Although Applicant denied the allegations under the personal conduct guideline, the conduct is based on the allegations under the financial considerations guideline 1.a and 1.c for not filing federal and state income tax returns from 2003 through 2010. He admitted under Guideline F that he did not do so. Although, he claimed that he filed in 2012, he presented no proof.

Alcohol Consumption

Applicant admitted SOR allegation 3.a through 3.d concerning his alcohol driving convictions. He denied 3.e which alleged that he continues to drink to the point of intoxication approximately twice a month. However, this is in conflict with his 2012 investigative interview. (Item 4)

Applicant has a history of arrests and charges for driving under the influence from 1986 until 2009. Applicant reported his four DUI incidents on his security clearance application. He pled *nolo* to the 1986 DUI charge. He was found guilty of possession of marijuana, hit and run and alcohol offense by furnishing alcohol to a person below legal age.²

In 1995, Applicant was arrested and charged with misdemeanor DUI, and felony habitual offender. He pled *nolo* to the DUI charge, the prosecution of the habitual offender charge was deferred. He was sentenced to jail for 12 months (suspended) and ordered to pay a fine for the DUI offense.

In August 2007, Applicant was arrested and charged with misdemeanor DUI. He pled guilty; his license was revoked for six months; and he was fined. He was ordered to complete a DUI class and was placed on probation for one year.

In September 2009, Applicant was arrested and charged with misdemeanor DUI and battery. He was convicted of the DUI charge. He was confined for 24 hours, ordered to perform 40 hours of community service, fined, and placed on probation for 12 months.

Since 2009, Applicant has continued to drink, to include drinking to the point of intoxication approximately twice a month. In his answer to the SOR, Applicant stated that he no longer gets intoxicated. He claims that he started AA in 2009 and believes he has become a better person. He states that since coming to work for his current employer he is making progress.

Applicant explained in his 2012 investigative interview that he does not recall completing his alcohol education class or community service. In response to questions

²Applicant was also charged with marijuana related incidents and failure to stop or return to scene of an accident.

during the interview he stated that he attended AA classes in 1986 after the first DUI. Applicant stated that he first used alcohol when he was 15 years old. He would drink beer at home. At age 19, Applicant changed from drinking beer to whiskey on the weekends. He noted that from 2009 to the present he has three to four beers on the weekend. He noted that he may still become intoxicated every other weekend at home.

There is no evidence in the record that Applicant has been evaluated for alcohol abuse, or that he has attended any counseling or treatment related to alcohol. There is no indication that Applicant currently attends AA.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 access to classified information will be resolved in favor of 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ³ The burden of proof is something less than a preponderance of evidence. ⁴ The ultimate burden of persuasion is on the applicant. ⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect 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 Executive Order 10865 provides that 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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, “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:

- (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;

- (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

- (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;

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

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

(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;

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and,

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant has a history of alcohol-related incidents. His convictions for DUI started at the age of 19 and continued until 42. AG ¶¶ 22(a) and (c) apply.

AG ¶¶ 23 provides 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 good judgment;

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and,

(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.

After considering the mitigating conditions, I find that given the information in this record, Applicant has not mitigated the alcohol concern. His last DUI was in 2009. Given his pattern of alcohol use over a 23 year span and the fact that he

states that he still sometimes drinks to intoxication does not provide mitigation. There is not sufficient information in the record to meet his burden.

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted that he failed to file federal and state income tax returns from 2003 through 2010. He had no valid reason for not doing so. He incurred delinquent debts. He did not pay his taxes (federal or state), incurred tax liens, and failed to pay several bills. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. Also 19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same) is applicable. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant has not provided any evidence to mitigate the current security concern under Guideline F. He did not present evidence that he filed the returns, despite his claim that he did so in 2012. He provided no information on any payments or plans to address the taxes or debts. Consequently, Financial Considerations Mitigating Condition (FCMC) 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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies. As noted, Applicant answered that he just made a poor decision not to file and that he did not act as a grown person. There is no evidence that he acted reasonably under the circumstances. He has not submitted documentation to show that he has resolved or is resolving his delinquent debts. This mitigating condition does not apply.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant has not provided

evidence of any payment plans.. His failure to provide information about financial counseling obviates the applicability of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 information.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. Under AG ¶ 16(c), a disqualifying conditions exists when there is "Credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information."

Applicant's failure to file his Federal and State tax returns from 2003 through 2010 or pay any taxes or penalties is a security concern. There is no evidence in the record that he contacted the IRS or state authorities at the time he was required to file, in order to explore his options. The failure to file tax returns suggests that Applicant has a problem with complying with rules. Voluntary compliance with rules and systems is essential for protecting classified information. Applicant's failure to file his tax returns precludes a finding that he has the good judgment and reliability needed to be cleared for access to classified information.

After considering the mitigating conditions outlined in AG ¶ 17, I conclude that none of them apply. Applicant has not taken steps to alleviate and change his behavior and that this is unlikely to recur. I have doubts about his good judgment and reliability. He has not provided information in this record to show that he has met his burden of proof to mitigate the personal conduct concern.

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 an applicant's conduct and all the circumstances. The 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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 48 years old. He has had a pattern of financial, alcohol, and personal conduct concerns over a span of 23 years.

He did not provide any information in response to the FORM to provide evidence that he has mitigated any of the three guidelines. He has not met his burden of proof. I have doubts about his judgment and reliability based on the record. Any doubts must be resolved in favor of the national security.

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-1k:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a:	Against Applicant
Paragraph 3, Guideline G:	AGAINST APPLICANT
Subparagraphs 3.a -3.e:	For 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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge