



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



In the matter of:)	
)	
)	ISCR Case No. 14-03060
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: Ryan Nerney, Esq.

February 4, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a history of financial delinquencies and has been convicted three times for Driving Under the Influence of Alcohol (DUI). He has not demonstrated the good judgment required to hold a security clearance. He failed to mitigate the Financial Considerations or Alcohol Consumption security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 8, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On July 29, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline G, Alcohol Consumption. 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 September 1, 2006.

Applicant answered the SOR on September 16, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on October 27, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 28, 2014, scheduling the hearing for November 26, 2014. Applicant requested a continuance and the case was rescheduled to December 17, 2014. Due to unforeseen circumstances, the case was continued to January 5, 2015. The hearing was held on January 5, 2015, as scheduled.

The Government offered Hearing Exhibit I and Exhibits (GE) 1 through 9, which were admitted without objection. Applicant offered Exhibits (AE) A through P, which were admitted without objection. Applicant testified on his own behalf. The record was left open for Applicant to submit additional exhibits and on January 19, 2015, Applicant presented six additional exhibits and a brief marked AE Q through AE V. Department Counsel had no objections to AE Q through AE V and they were admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on January 13, 2015.

Findings of Fact

Applicant is 47 years old and is a naturalized U.S. citizen. He has been employed with a Government contractor for more than 21 years. He holds a security clearance in connection with his employment. He is married and has four children. (GE 1; AE B; Tr. 27-30, 80-84.)

Financial Considerations

The Government alleged that Applicant is ineligible for a clearance, in part, because he has made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR alleged that Applicant was delinquent in payments to six creditors, totaling \$46,869, and that an investigation into his late payments on a cash advance revealed that he had used his company credit card for personal expenses, in violation of company policy. In his Answer Applicant denied all of the allegations, which were listed in credit reports dated Jul 2013, July 2014, October 2014, and January 2015. Applicant's debts are as follows.

Applicant was indebted to a collection agent for a vehicle loan in the amount of \$29,107, as alleged in SOR subparagraph 1.a. The vehicle was totaled in an accident. Applicant's insurance company issued a settlement on the insurance claim in the amount of \$16,561.60 directly to the lender. In a letter, Applicant's wife explained that she reached a settlement agreement to pay the lender an additional \$1,000 and that the lender said it would "write-off" an additional \$768. She was unable to provide copies of the agreement because the debt was over ten years old and she no longer had the records. (AE R.) However, an excerpt from Applicant's January 5, 2009 credit report listed this debt as "paid in settlement." (AE K, at page 5.) As a result, Applicant has formally disputed this delinquency. Applicant has responsibly addressed this debt. (Tr. 30-43, 93-96.)

Applicant was indebted to a telecommunications company in the amount of \$591, as alleged in SOR subparagraph 1.b. Applicant believes this debt was for a cable box which he returned, but he was unable to find the receipt. He claimed he resolved this debt in full.¹ He provided copies of a March 10, 2014 \$206.84 debit card transaction, a March 31, 2014 \$209.84 debit card transaction, and a September 12, 2014 \$206.86 debit card transaction. However, the debit card transactions do not identify this creditor. (AE J.) Applicant's January 2015 credit report reflects this debt as delinquent in the amount of \$591. It is unresolved. (GE 9; Tr. 45-47, 96-97.)

Applicant is indebted on a timeshare mortgage for two different debts of \$13,209 and \$1,624, as stated in SOR subparagraphs 1.c and 1.e, respectively. Applicant purchased this timeshare property in 2003.² (Tr. 99.) Applicant testified:

Well, my wife and I were financially stable and we decided to get a timeshare. You know, you -- you get invited to events and we signed up for it. But within, you know -- I think within six months, we -- actually, within a year, we feel we never used it, you know, it was just a waste of money. So we -- we were trying to cancel it or trying to, you know, sell it back to them. And it didn't work out that way. (Tr. 48.)

Applicant stopped making payments. He attempted to contact the resort by letter dated March 8, 2014, to arrange payments, but received no reply to his letter. (AE E.) After the hearing, Applicant went to the resort in person to discuss his account. His information was taken by a receptionist and forwarded to the collections department, who called him the next day. He was informed that the "account was closed and that no payment arrangements could be made because the account was reported as a charge off." (AE Q.) Applicant is willing to make payments on this debt, but is unable to do so because the creditor is unwilling to reopen the account. (AE R; Tr. 47-53, 99-102.)

Applicant was indebted to a bank in the amount of \$438, as alleged in SOR subparagraph 1.d. Applicant testified that he disputed this debt. His January 2015 credit report reflects this debt as paid. It is resolved. (GE 9; Tr. 54-57, 97-98.)

Applicant was indebted to a state court for an unpaid fine, which resulted from a 2010 DUI conviction, as discussed below and alleged in SOR subparagraph 1.f. Applicant established a payment plan in May 2014 to pay this \$1,900 debt through monthly payments of \$190. In July 2014 Applicant paid off the balance of this debt. It is resolved. (AE D; Tr. 57-59.)

In March or April 2012, Applicant received a cash advance by his employer for a business trip. He was late in repaying the cash advance. He was also late in repaying his corporate credit card. A subsequent investigation conducted by his employer

¹ Applicant's June 14, 2013 credit report reflects another collection account with the same creditor as a "paid collection." This paid debt bears a different account number than the debt alleged in subparagraph 1.b. (GE 6.)

² Applicant testified to this date, although the credit report reflects the account was opened November 2010. (GE 6.)

revealed that he used some of the cash advance and his corporate credit card for personal expenses, in violation of company policy. Additionally, Applicant was not able to repay his debt to his company in a timely manner, and was required to sign a promissory note and establish a repayment plan. (GE 4; AE T; Tr. 59-67.) Applicant fully repaid this debt. (AE H.) He testified that he used the corporate credit card for some personal expenses, like gas. He stated:

I mean, I wasn't using it - - I was using it - - I can admit that I used some - - you know, I did use it for personal like gas or something like that, like you know - - but I didn't take advantage of it. And I believe - - you know, I'm not speaking for everybody, but I believe that everybody that has a company credit card, they're gonna use it if they need to as long as they take care of their bill." (Tr. 108.)

The evidence shows that in addition to the debts alleged on the SOR, Applicant has had a tumultuous financial history. He testified that his previous home was sold in a short-sale in 2009.³ (Tr. 116-117.) His pay was garnished in 2006 when he failed to repay a delinquent student loan. (GE 4; Tr. 112-113.) His August 2004 credit report reflects additional collection accounts. (GE 5.)

Applicant attributes his recent financial problems to his wife's unemployment from 2010 to January 2014. (Tr. 68, 126.) His personal financial statement shows that their joint income covers current bills and leaves a net monthly remainder of \$1,895.60. (AE N.) He has no new delinquencies identified on his January 2015 credit report. (GE 9.) Applicant completed financial counseling in September 2014. He testified he has taken steps to learn to budget his finances. He intends to save money to purchase a home. His company has issued him another corporate credit card. (AE I; AE T; Tr. 114-117.)

Alcohol Consumption

The Government alleged that Applicant is ineligible for a clearance due to his alcohol consumption. Applicant denied SOR allegations 2.a through 2.d. The concerns are set out chronologically below. (Answer.)

Applicant was arrested in May 1990 and charged with DUI. The arrest occurred after Applicant consumed alcohol at a bowling alley and attempted to drive home. He was fined and placed on probation as the result of this incident. He was also required to attend Alcoholics Anonymous (AA) for three months and group alcohol counseling. (GE 2; Tr. 76-78.)

In December 1994 Applicant was arrested and charged with DUI, with a Blood Alcohol Content (BAC) of .08% or Higher; and Hit and Run (Property). He had consumed alcohol at an after-work event and attempted to drive home. He was in an accident on the way home. On March 20, 1995, Applicant pled guilty to the DUI charge

³ Although the credit reports reflect this sale may have happened in 2011. (GE 9.)

and was sentenced to five years of probation; fined \$1,175; and was ordered to attend an alcohol rehabilitation 2nd level treatment program. He testified that this experience taught him he should not drink and drive. (GE 2; Tr. 73-76, 87.)

In August 2010 Applicant was arrested and charged with DUI for the third time. This incident occurred after Applicant had been drinking with friends at a brewery after work. He pled guilty in April 2011. He was fined \$1,660; ordered to enroll in a first offender program; and placed on summary probation until at least April 2014. Applicant failed to pay the fine for this DUI until July 2014, as discussed above in relation to SOR subparagraph 1.f. He attended AA once a week, for four months, as part of his sentence. He did not attend AA or other alcohol counseling beyond what was required by the court. Applicant did not inform his security officer of this arrest and conviction until he completed a new security clearance application in August 2012. (GE 1; AE D; Tr. 69-73, 88-89, 113.)

Applicant testified that he primarily used alcohol in social settings. He continued drinking alcohol after his August 2010 DUI, until approximately July or August 2014. He has abstained from the use of alcohol since July or August 2014. He signed a statement of intent to never use alcohol again on September 4, 2014. However, he found alcohol use "somewhat tempting" around the holidays when he was around family members that consumed alcohol. His wife reminded him that he was not supposed to be drinking, and he abstained. He does not plan to drink in the future because of the effect it has had on his life. (AE B; AE C; Tr. 78-79 87-93.) He testified he elected to abstain from using alcohol:

Because I really want to show the Government or the public that this is something that I can control. I don't want to, you know, be -- be I would say targeted as an alcoholic because I'm not, you know. I honestly don't think I have a problem. I mean, even though I may show that because I had three DUIs within, you know, a four-year period and a 16-year period. (Tr. 124.)

Mitigation

Applicant is considered reliable and to possess a high level of integrity. His neighbors confirm he is considered trustworthy by those that know him in the community. He is considered to be an outstanding employee by those that work with him. His employee evaluations for 2012-2013 reflect he is a hard worker and has always been dependable. (AE A; AE N.)

Policies

When evaluating an applicant's suitability for a security clearance, the 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, 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 AG ¶ 2(a) describing 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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 clearance 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 as to 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 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.

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

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loss statements, and other intentional financial breaches of trust.

Applicant's financial problems, identified in allegations 1.a through 1.g, demonstrate that Applicant failed to address his financial obligations in a responsible manner for a four-year period from 2010 to early 2014. During that time, he was unable to satisfy debts because his wife lost her job. He resorted to the deceptive financial practice of using his corporate credit card and travel advances for personal expenses, in violation of company policy. The above disqualifying conditions apply.

Five Financial Considerations mitigating conditions under AG ¶ 20 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(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;

(d) the individual initiated 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 delinquencies, as alleged on the SOR, extend from 2010 to 2014. However, he has a much longer history of financial indebtedness, which includes a short sale of his home, a garnishment to pay student loans, and collection accounts that appear on a 2004 credit report. Applicant lacks a track record of financial responsibility that would suggest future delinquencies are unlikely to occur. Further, his decision to use his corporate credit card and cash advances for personal expenses demonstrates Applicant's lack of good judgment. Given his past financial problems, I cannot find that future financial problems are unlikely to occur, despite a current monthly surplus and recent financial counseling. Applicant's financial history continues to cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) is not applicable.

Applicant explained that his wife's four years of unemployment from 2010 to January 2014 contributed to his financial delinquencies. Her unemployment was largely beyond their control. However, his delay in addressing the timeshare debts in subparagraphs 1.c and 1.e was directly attributable to Applicant's choice to stop making payments on them because he did not use the time share.⁴ Further, to be fully applicable, AG ¶ 20(b) requires that the individual act responsibly under the circumstances. Applicant did not act responsibly in handling the timeshare debt, or by using his corporate credit card and cash advance on personal expenditures. Further, Applicant did not exhibit responsible behavior from 2010 through 2013, when he ignored the debts listed in subparagraphs 1.b, 1.c, 1.e, and 1.f. While he began to contact and repay some creditors in 2014, he was only able to show that he satisfactorily resolved the debts in subparagraphs 1.a, 1.d, 1.f, and 1.g. He failed to document payment of the debt in subparagraph 1.b. The debts in subparagraphs 1.c and 1.e were deemed uncollectable by the creditor because they were delinquent for an extended period of time. AG ¶ 20(b) is only partially applicable.

Applicant attended formal financial counseling. However, he failed to present clear indications that his financial problems are under control given his financial history. Not enough time has passed to assure the Government that his financial counseling

⁴ If Applicant purchased the time share in November 2010, as stated in the credit report, rather than in 2003 as he testified, the time share would have been purchased after Applicant's wife was unemployed. Applicant has the burden of establishing mitigating facts and he has presented conflicting dates that do not support a case in mitigation.

and budgeting efforts will forestall future financial delinquencies. Further, his lack of remorse regarding his misuse of his corporate card and cash advance demonstrate he does not understand the seriousness of his actions, even after completion of the financial counseling. AG ¶ 20(c) does not fully mitigate the concerns.

Applicant resolved the delinquencies in subparagraphs 1.a, 1.d, 1.f, and 1.g through either payments or dispute. In good faith, albeit extremely late, he recently contacted the creditor in subparagraphs 1.c and 1.e with an offer to make payments on those debts. He believes he resolved the debt in subparagraph 1.b, despite the lack of documentation. His efforts to address the debts in the past six to ten months show some mitigation. AG ¶ 20(d) is partially applicable. Overall, however, his recent series of actions do not fully mitigate the concerns raised by a long history of financial mismanagement.

Applicant presented evidence to show that he formally disputed allegations 1.a and 1.d. AG ¶ 20(e) is applicable, in part, to those allegations.

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. The disqualifying conditions raised by the evidence are:

(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; and

(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.

Applicant was convicted of DUI incidents in 1990, 1994, and 2010, after he consumed alcohol to the point of impaired judgment. The DUI incidents raise security concerns under AG ¶¶ 22(a) and 22(c).

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns. The following mitigating conditions have been considered:

(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.

None of the above mitigating conditions fully apply. Applicant's DUI arrests and convictions span 20 years. Not enough time has passed since his decision in July or August 2014 to abstain from alcohol use to find that it is unlikely that he will not drive after becoming intoxicated again. He is not attending any alcohol counseling or participating in AA. Instead, he has relied upon his wife to remind him of his commitment to sobriety at times of temptation. He is beginning to establish a pattern of abstinence, but it is too soon to conclude that Applicant fully established mitigation under the terms of AG ¶¶ 23(a) or 23(b). Although Applicant has participated in court ordered alcohol treatment, he has a history of recidivism. He has not attended inpatient or outpatient counseling, or rehabilitation, or offered a favorable prognosis by a qualified medical professional since his 2010 DUI. AG ¶¶ 23(c), and 23(d) do not apply.

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(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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and G, in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant is respected by his employer and peers. He is a good neighbor. Since his wife has been employed, he has satisfied some of his delinquent accounts. He has recently either contacted his creditors or formally disputed debts. He is currently abstaining from the use of alcohol. However, he failed to acknowledge the seriousness of his alcohol-related actions or recognize that he has a problem with alcohol. He minimized the seriousness of using a corporate credit card and cash advance for personal expenses. As a result, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated Financial Considerations or Alcohol Consumption 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge