



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



In the matter of:)	
)	
)	ISCR Case No. 14-00799
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

12/10/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, but he did not mitigate the financial considerations, alcohol consumption, and criminal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 21, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on May 3, 2014, and May 17, 2014, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel amended the SOR on July 10, 2014, adding allegations under Guidelines E (personal conduct), G (alcohol consumption), and J (criminal conduct). Applicant responded to the

amended SOR on July 19, 2014, and again elected to have the case decided on the written record in lieu of a hearing.

The Government's written case was submitted on September 8, 2014. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on October 23, 2014. As of December 4, 2014, he had not responded. The case was assigned to me on December 5, 2014. The Government exhibits included in the FORM (Items 5-9) are admitted.

Findings of Fact

Applicant is 49 years old. He is being sponsored for a security clearance by a defense contractor. It is unclear if he is currently employed by the contractor. He served in the U.S. military from 1983 until he was honorably discharged in 1989. He is divorced with no children.¹

Applicant has multiple alcohol-related arrests and convictions. He was arrested and charged with driving under the influence (DUI) in January 1988 and June 1988. He was convicted of the June 1988 offense and received probation for six months.²

Applicant was arrested in October 1993 and charged with driving while intoxicated (DWI). He pleaded guilty and was sentenced to confinement for 25 days and a \$400 fine. He was arrested in November 2000 and charged with DWI. He pleaded guilty and was sentenced to confinement for 90 days, which was suspended, probation for 12 months, and \$1,020 in fines and court costs.³

Applicant was arrested on July 4, 2012, in a state where he did not live. He was charged with DUI. The case was dismissed in September 2012. The case was refiled as aggravated DWI in November 2012. Applicant failed to appear for his trial in February 2013. He was charged with failure to appear, and a bench warrant was issued. He has not resolved the matter, and the bench warrant is still active.⁴

Applicant admitted to "consuming alcohol, at times to excess and to the point of intoxication from at least 1987 to at least July 2012." However, he indicated that he has been sober since July 5, 2012.⁵

¹ Item 5.

² Items 4, 7, 8.

³ Items 4, 7, 8.

⁴ Items 4, 5.

⁵ Items 4, 8, 9.

The SOR alleges sixteen delinquent medical debts totaling about \$12,500, five miscellaneous delinquent debts totaling about \$11,800, and a \$12,000 debt to the IRS for tax year 2012. Applicant admitted owing all the debts.⁶

Applicant worked overseas for defense contractors on several occasions. He also had periods of unemployment. He indicated that he incurred medical debts because he did not have medical insurance. He indicated that he was working on paying his taxes, but he admitted that he was “financial[ly] strapped.” No additional information about his finances was submitted.⁷

Applicant submitted a Questionnaire for National Security Positions (SF 86) in June 2013. Under the financial questions, he listed that he owed “\$12,000 (Estimated)” to the IRS for 2012. He did not list any other delinquent debts. Under the police record questions, he listed his 2012 DWI arrest, but he wrote that the charge was dismissed. He did not list his other alcohol-related arrests and convictions.⁸

Applicant stated that he was unaware that the DWI charge had been refiled until he was interviewed for his background investigation.⁹ Having considered all the evidence, I find that there is insufficient evidence to conclude that Applicant intentionally falsified the SF 86.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

⁶ Item 3.

⁷ Items 3, 5.

⁸ Item 5.

⁹ Item 4.

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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure 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. The following are potentially applicable in this case:

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

Applicant has delinquent debts that he is unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

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

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

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, 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; and

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

Applicant had several periods of unemployment, which qualifies as a condition that was beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant stated that he is working on paying his taxes. He provided no other explanation for how he is addressing his financial problems. There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant'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 conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(a) a single serious crime or multiple lesser offenses; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant has multiple alcohol-related arrests and convictions. The above disqualifying conditions are applicable.

SOR ¶ 3.b alleges that Applicant has an outstanding bench warrant. That information is already included in SOR ¶ 3.a. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). SOR ¶ 3.b is concluded for Applicant.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(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, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant failed to appear for his latest DWI trial, and a bench warrant was issued. He has not resolved the matter, and the bench warrant is still active. None of the mitigating conditions are applicable.

Guideline G, Alcohol Consumption

The security concern 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 notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

(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 has been arrested on multiple occasions for DUI and DWI. He admitted to “consuming alcohol, at times to excess and to the point of intoxication from at least 1987 to at least July 2012.” AG ¶¶ 22(a) and 22(c) are applicable.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

(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; and

(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).

Applicant indicated that he has been sober since July 5, 2012. That mitigates the “habitual or binge consumption” concerns, but it does not mitigate the “alcohol-related incidents” concerns. AG ¶ 23(a) is not applicable. AG ¶ 23(b) is applicable to SOR ¶ 2.a.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

There is insufficient evidence for a determination that Applicant intentionally provided false information on his SF 86. AG ¶ 16(a) is not applicable. SOR ¶¶ 4.a and 4.b are concluded for Applicant.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E, F, G, and J in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's honorable military service and his work overseas for a defense contractor. However, Applicant has multiple alcohol-related arrests and an outstanding bench warrant. He also has unresolved financial problems.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, but he did not mitigate the financial considerations, alcohol consumption, and criminal conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.v:	Against Applicant

Paragraph 2, Guideline G:	Against Applicant
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.f:	Against Applicant
Paragraph 3, Guideline J:	Against Applicant
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	For Applicant
Paragraph 4, Guideline E:	For Applicant
Subparagraphs 4.a-4.b:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge