



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-01185
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

04/21/2016

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate security concerns regarding his finances, alcohol consumption, drug involvement, and personal conduct issues associated with his omission of his alcohol and drug-related incidents in the security clearance application he completed. Eligibility for access to classified information is denied.

History of the Case

On August 26, 2014, Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken 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 (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on January 30, 2015, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on August 3, 2015, and responded to the FORM within the time permitted with a handwritten letter and copies of the FORM materials. Applicant's submissions were admitted as Items 14 and 15. The case was assigned to me on September 1, 2015.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated five delinquent debts exceeding \$28,000. Allegedly, the debts remain outstanding.

Under Guideline G, Applicant allegedly (a) abused alcohol and was involved in seven alcohol-related incidents between 1975 and 2013; (b) received treatment in 2007 and diagnosed alcohol dependent; and (c) consumed alcoholic beverages with varying frequency until at least June 2014.

Under Guideline H, Applicant allegedly (a) was involved in two drug-related incidents between April 2002 and August 2004 (as set forth in subparagraphs 1.c and 1.d); (b) used marijuana from at least approximately 2005 until at least June 2014; and (c) used marijuana on various occasions while holding a security clearance.

Under Guideline E, Applicant allegedly falsified his security clearance application of September 2013 by omitting his delinquent debts, use of illegal drugs while holding a security clearance, and his alcohol-related offenses and use of illegal drugs. Applicant's omissions were allegedly made deliberately.

In his response to the SOR, Applicant admitted all of the allegations. He provided information about the status of his debts and his financial circumstances, but furnished no specific explanations or information about his alcohol and drug-related offenses. Nor did he provide any explanations why he omitted information in his security clearance application about his alcohol and drug-related incidents.

Findings of Fact

Applicant is a 58-year-old board member of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in July 2005 and has three children from prior relationships. (Item 5) Applicant earned his high school diploma in August 1979 and claimed no post-high school education. (Item 5). He enlisted in the Navy in November 1981 and served 22 years of active duty. (Items 2-4)

Applicant has been employed as a member of the board of directors of a limited liability corporation (LLC) since February 2006. (Items 5 and 6) He was granted a security clearance in October 2009 and applied for a top secret clearance in October 2009. (Items 5 and 13) Previously, he was employed as a laborer for a tribal company between November 2004 and November 2012. (Item 5) Preceding six months of unemployment, he reported employment as a bus driver between September 2001 and May 2004.

Applicant's finances

Between 2006 and 2013, Applicant accumulated a number of delinquent debts. Altogether, he accrued over \$28,000 in delinquent debts. (Items 8-9) In his response, he attributed some of his financial difficulties to unemployment, but furnished no details of his difficulties. All of Applicant's admitted debts in the SOR remain unsatisfied with no documented plan to resolve them.

Applicant's alcohol consumption

Applicant presents with a significant history of excessive drinking and alcohol-related incidents. Records document his involvement in eight alcohol-related incidents over a period of 32 years. (Items 6-13) In an interview with an agent from the Office of Personnel Management (OPM) in July 2014, he disclosed his eight alcohol-related arrests, beginning with his first arrest in 1975 for disorderly conduct. (Item 7)

In an OPM interview of July 2009, Applicant confirmed he was ordered by the court presiding over his July 2006 alcohol-related conviction to seek alcohol counseling. (Item 6) When evaluated and treated on an outpatient basis in November 2007, he was diagnosed alcohol dependent and left with the impression there is little chance of remission. (Item 6) Since completing this counseling, he has continued to consume alcohol and was involved in other alcohol-related arrests between 2000 and 2013. (Item 7)

Records document that in 2007 or 2008 (precise dates unclear), Applicant was diagnosed alcohol dependent and received outpatient treatment and alcohol counseling at an identified local facility. (Items 6 and 7) Details of his treatment, diagnosis, and prognosis are not available.

Applicant's alcohol counseling consisted of weekly sessions. He completed 16 weeks of counseling at this treatment facility. (Item 7) Despite his counseling, he never felt much improvement or chance of remission. Records document that Applicant has held a security clearance between June 2009 and the present. (Items 6 and 13)

Between 2002 and 2006, Applicant was arrested and charged with alcohol-related arrests on five occasions. (Items 6 and 7) His earliest arrest in 1975 involved public intoxication. (Item 6) Records of the legal disposition are not available. In a series of alcohol-related incidents between 2002 and 2007, Applicant was charged with driving under the influence (DUI), driving while intoxicated, and actual control of a vehicle while

intoxicated. He was convicted on each of these charged offenses and either fined, placed on probation, or ordered to do both. (Items 6 and 7)

As a result of his 2006 conviction, Applicant was required to get an alcohol and drug evaluation. (Item 6) Records show that Applicant was evaluated in November 2007 at a substance abuse center in his home state. (Item 6) He attended weekly outpatient counseling sessions between November 2007 through May 2008 and was diagnosed to be alcohol dependent.

After completing his counseling sessions, Applicant returned to abusive drinking and was detained by police on two occasions between 2007 and 2013 for public intoxication. (Item 6) He admits to drinking once a month, and consuming at least 16 beers per setting. Still, he assured the interviewing agent from the OPM Office of Personnel Management (OPM), who interviewed him in January 2014, that he does not feel he has an alcohol problem. Others, he acknowledged, do feel he has a problem with alcohol. (Item 6) He provided no details, though, of their assessments of him.

Afforded an opportunity to provide updated information on his alcohol consumption and drinking habits, Applicant declined to do so. (Item 14) Without more information, no changes in his drinking status can be inferred from the evidence in the record.

Applicant's drug use

Besides alcohol, Applicant used illegal substances (marijuana) over the course of seven years spanning 2006 and 2013 while holding a security clearance. (Item 6) He admitted to using marijuana twice weekly, which he characterized as part of his self-medicating regiment for insomnia and depression. He enjoys smoking marijuana and looks forward to the passage of legislation in his state that legalizes the use of the substance. (Item 7)

He assured the interviewing OPM agent that he never purchased his marijuana, but obtained it from friends. He admitted to consistently using marijuana over the past seven years while holding a security clearance. (Item 6) Applicant furnished no assurances that he has any intention of ceasing his use of marijuana in the foreseeable future.

Applicant's security clearance application omissions

Asked to complete an electronic questionnaires for investigations processing (e-QIP) in September 2013, Applicant answered "no" to questions inquiring about the state of his finances in section 26. (Item 5) In so answering, he deliberately failed to disclose the requested information about his finances.

Applicant answered "no" as well to questions inquiring about his drug use in section 23, and to questions in section 22 inquiring whether he had ever been charged with an offense involving alcohol or drugs. (Item 5) In answering "no" to each of the

questions covered by sections 22 and 23 of his e-QIP, he deliberately failed to disclose his alcohol and drug-related information covering his alcohol and drug incidents. When interviewed by an OPM agent in January 2014, Applicant provided information concerning his finances, alcohol consumption, and alcohol-drug offenses. Whether he provided this information voluntarily or after being confronted by the agent is unclear. (Item 6)

Based on a review of Applicant's e-QIP omissions and OPM interview responses, good-faith explanations of his omissions cannot be inferred or implied from the record. Considering Applicant's responses and the materiality of his omissions, inferences of knowing and wilful omissions cannot be averted.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

The AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

Financial Considerations

The Concern: 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

Alcohol Consumption

The Concern: 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 ¶ 21.

Drug Involvement

The Concern: Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. AG, ¶ 24

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, 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, ¶ 15.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the

evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is an employed board member of a corporation and has no full-time position with this firm. Security concerns are raised over Applicant’s accrual of delinquent debts, abuse of alcohol, drug use (including his use while holding a security clearance), and falsification of his e-QIP.

Financial concerns

Over the course of a seven-year period (2006 through 2013) he accumulated a number of delinquent debts that he has not addressed to date. His collective accumulation of delinquent debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines. DC ¶ 19(a), “inability or unwillingness to satisfy debts,” and DC ¶19(c), “a history of not meeting financial obligations,” apply to Applicant’s situation.

Applicant’s pleading admissions with respect to his accumulation of unaddressed delinquent debts covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant’s listed filing lapses and debts are fully documented in his credit reports. Some judgment problems persist over Applicant’s insufficiently explained accrual of mortgage debts with his principal lender and other consumer creditors. To date, he has taken insufficient corrective steps to resolve his delinquencies and demonstrate

he acted responsibly in addressing his listed debts. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

To some extent, Applicant's delinquent debts are attributable to his lack of full-time employment. Based on the documented materials in the FORM, some identified extenuating circumstances are associated with Applicant's inability to pay or otherwise resolve his debts. Partially available to Applicant is MC ¶ 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."

Without any evidence of addressing his debts, no MC ¶ 20(b) credit can be accorded him for acting responsibly in paying or otherwise resolving his listed debts in the SOR. Because of the lack of record evidence of financial counseling and specific steps he has taken to address his past-due debts, Applicant is not entitled to any mitigation credit.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent consumer debts and failure to resolve them. Resolution of his listed delinquent accounts is a critical prerequisite to his regaining control of his finances.

Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable Applicant to establish judgment and trust levels sufficient to overcome security concerns arising out of his lapses in judgment associated with his accumulation of delinquent consumer debts.

Taking into account all of the documented facts and circumstances surrounding Applicant's accrual of delinquent consumer debts, his lack of more specific explanations for his debt accruals, and his lack of documented resolution of them, it is still too soon to make safe predictions of Applicant's ability to satisfactorily resolve his debts. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.e of Guideline F.

Alcohol concerns

Applicant's recurrent problems with abusive drinking over the course of many years raise considerable security concerns over the risk of his returning to abusive drinking in the foreseeable future. On the strength of the evidence presented, four

disqualifying conditions (DC) of the AGs for alcohol consumption may be applied; DC ¶ 22(a), “alcohol-related incidents away from work, such as driving under the influence, fighting, child abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; DC ¶ 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;” DC ¶ 22(d), “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or dependence;” and DC ¶ 22(f), “relapse after diagnose of alcohol abuse or dependence and completion of an alcohol education, evaluation, treatment, or abstinence.”

Taking into account Applicant’s lengthy history of alcohol-related incidents (mostly between 2002 and 2013), his outpatient counseling, his diagnosed alcohol dependency without any diagnostic updates or meaningful long-term rehabilitative program, and a corresponding lack of probative evidence of his abstaining or moderating his drinking since receiving an alcohol dependence diagnosis in 2009, Applicant has failed to demonstrate enough improvements in his maturity level and understanding of the dangers of excessive drinking to facilitate safe predictions he can avoid recurrent alcohol abuse in the foreseeable future. Unfavorable conclusions are warranted with respect to the allegations contained in Guideline G.

Drug Use concerns

Applicant’s past use of illegal drugs (marijuana) consumed a substantial period of Applicant’s life, spanning 2006 through 2013. During his inclusive period of using marijuana, he admitted to using it twice a week for self-medicating of insomnia and depression. Based on the evidence presented, three disqualifying conditions of the Adjudicative Guidelines for drug abuse are applicable: DC ¶ 25(a), “any drug abuse,” DC ¶ 25(c), “illegal possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” and DC ¶ 25(g), “any illegal drug use after being granted a security clearance.”

Because Applicant’s marijuana use is barred by state law in Applicant’s state of residence as well as federal law, his use of marijuana is fully covered by Guideline H. Applicant’s use and possession of illegal drugs while holding a security clearance are resolved unfavorably to Applicant.

Personal Conduct concerns

Security concerns are raised as well over Applicant’s failure to list his delinquent debts, his drug use and possession, and his alcohol and drug-related offenses. Such concerns are raised when an applicant has committed conduct that reflects questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations.

Looking at the developed facts and circumstances of this case, one of the disqualifying conditions (DC) under the personal conduct guideline has some initial

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

