



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



In the matter of:)	
)	
)	ISCR Case No. 14-01654
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

10/21/2015

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the security concerns raised by his unresolved delinquent debts and his history of alcohol-related incidents away from work. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and Department of Defense (DOD) Directive,¹ on June 6, 2014, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations, alcohol consumption, and personal conduct guidelines. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960; as amended, as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing.² At the hearing convened on June 3, 2015, I admitted Government's Exhibits (GE) 1 through 7, without objection. Applicant testified, but did not submit any documents. The record remained open until June 30, 2015. Department Counsel submitted GE 8, which was also admitted without objection. Applicant did not submit any documents. DOHA received the transcript (Tr.) on June 11, 2015.

Procedural Issue

After receiving a copy of the SOR through his facility security officer (FSO) in June 2014, Applicant returned the written receipt to DOHA, disclosing his mailing and e-mail addresses.³ Department Counsel sent discovery on October 19, 2014. On May 1, 2015, I sent Applicant an e-mail informing him that his hearing would be held on June 3, 2015 in his city of residence. DOHA sent notices of hearing to Applicant at the home and e-mail addresses he provided on the SOR receipt and to his business address, "eyes only," through his FSO. Applicant appeared at the hearing, having received the notice sent to his employer. He did not receive the Government's discovery letter and proposed exhibits or my scheduling e-mail.⁴

Applicant moved during the summer of 2014 and did not update his address with DOHA. He also had not checked his e-mail account in over a year. I recessed the hearing for one-and-a-half hours to allow Applicant to review the Government's proposed exhibits. I also asked Applicant to consider whether he wanted to proceed as scheduled or request a continuance. Upon reconvening, Applicant elected to proceed with the hearing. Department Counsel sent a second copy of the discovery letter and exhibits to Applicant after the hearing.⁵

Findings of Fact

Applicant, 48, has worked for a federal contractor as an indirect fire specialist since October 2013. Pending the disposition of the current adjudication, in June 2014, Applicant's employer transferred him to a position that does require access to classified information.⁶

² The discovery letter from Department Counsel is appended to the record as Hearing Exhibit (HE) I.

³ The SOR receipt is appended to the record as HE II.

⁴ Tr. 10-12.

⁵ Tr. 12-16.

⁶ Tr. 25-28; GE 1.

On his security clearance application, submitted the same month he began employment, Applicant disclosed a November 2011⁷ conviction for driving under the influence (DUI) of alcohol. He also disclosed the satisfaction of a \$10,000 judgment on a credit card through wage garnishment. The ensuing investigation revealed alcohol-related arrests in January 2012 and November 2012, three alcohol-related non-judicial punishments (NJP) Applicant received between 1985 and 1986 while serving in the U.S. Navy, as well as, seven additional delinquent accounts totaling \$55,000. The two arrests, three NJPs, and eight delinquent accounts are alleged in the SOR. Applicant denies trying to conceal the January 2012 arrest or any debts from the Government. He thought he disclosed the January 2012 arrest on the security clearance application, expressing concern that he did not properly save the information. He also believed that his delinquent accounts were resolved before he applied for access to classified information.⁸

Applicant admits that his financial problems began during his marriage, which lasted from 1994 to 2011. He used credit cards to pay his step-daughter's living expenses and other unexpected expenses. Applicant's reliance on credit cards increased after his ex-wife lost her job. Applicant testified that at least two years before their divorce, he and his ex-wife participated in a debt consolidation program. He believes that the credit card debt alleged in SOR ¶¶ 1.c. (\$13,942) was resolved through that program. He believes that the debt alleged in SOR ¶ 1.b (\$10,441), was resolved through the wage garnishment he reported on his security clearance application. He testified that the balance on the delinquent home mortgage alleged in SOR ¶ 1.f (\$21,306) was satisfied with the sale of the home in June 2013.

Applicant's most recent credit report, dated June 2015, shows that he is current on the credit card debt alleged in SOR ¶ 1.g (\$918). Applicant claims to have no knowledge of the debts alleged in SOR ¶¶ 1.a. (\$12,129), 1.d (\$3,541), and 1.e (\$1,564), although he admitted responsibility for SOR ¶¶ 1.a and 1.e in his January 2014 subject interview. Applicant also believes that the medical debts alleged in SOR ¶¶ 1.h (\$889) and 1.i (\$775) belong to his son, who shares Applicant's name. Applicant provided no documentation to corroborate his claims of debt repayment. He blamed the absence of corroborating evidence on his ex-wife, who refuses to give him the documentation about their finances. He also did not provide evidence showing that he has attempted to contact the creditors of the alleged accounts or dispute accounts he does not believe he owes.⁹ No documentary evidence was introduced showing any of the debts at issue belong to Applicant's son.

The SOR also alleges that Applicant has a history of alcohol-related incidents dating back to 1985. According to Applicant's military records, he served in the U.S. Navy from June 1984 to September 1986. Between 1985 and 1986, Applicant received

⁷ The correct date of the incident is November 2012, not November 2011 as mistakenly disclosed by Applicant.

⁸ Tr. 39; GE 1-7.

⁹ Tr. 29-35, 48; GE 1- 2, 8.

three non-judicial punishments for drunk and disorderly conduct. As a result, the Navy discharged Applicant under other than honorable conditions in September 1986. In contrast, Applicant does not believe that his alcohol-consumption habits were unlike those of his shipmates. Applicant does not remember receiving the non-judicial punishments. He believes that the Navy used his purported alcohol issues as a vehicle to push him out and claims that he chose to leave active-duty service because he was not permitted to change ratings. Applicant continued to consume alcohol after he was discharged from the Navy. However, he abstained from alcohol for 16 years after his son was born in 1993.¹⁰

Applicant began to experience alcohol-related issues again after his divorce in 2011. He became depressed after the failure of his marriage and his son began getting into criminal trouble. In January 2012, he drove home after attending a party where he consumed alcohol. He does not remember how much he had to drink that night, but he does remember taking pain killers after a dentist appointment earlier in the day. Pulling into his trailer park, Applicant's vehicle slid on ice and hit another car. He was charged with operating while intoxicated (OWI) and hit and run. Convicted of the OWI charge, Applicant was sentenced to one year of probation, which terminated early in September 2012. He was not required to attend alcohol counseling. In September 2012, Applicant moved home with his elderly parents. He was unemployed and received all of his financial support from them. He continued to use alcohol to self-medicate his depression, which was exacerbated by his inability to find employment and his son's impending long-term incarceration. In November 2011, he was arrested for DUI while driving home from a bar. He received a fine and was required to have an interlock device installed on his car.¹¹

Applicant continues to consume alcohol on occasion. He recognizes that he should not use alcohol to deal with periods of emotional distress. Since finding employment in 2013, Applicant testified that his life has improved significantly. He now lives with his girlfriend who does not drink. He avoids situations where he has the opportunity to overindulge in alcohol. Applicant also testified that his finances are back on track. He is able to live within his means and does not rely on consumer credit.¹²

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 used in evaluating an Applicant's eligibility for access to classified information.

¹⁰ Tr. 36, 41-44, 49-53; GE 7.

¹¹ Tr. 37-38, 53-60; GE 3-4.

¹² Tr. 45-47, 62.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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.

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.

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 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 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Financial Considerations

Unresolved delinquent debt is a security concern because "an individual who is financially over extended is at risk of having to engage in illegal acts to generate funds."¹³ Financial difficulties have proven to be a significant motivating factor for espionage or attempted espionage.¹⁴ The Government does not have to prove that an

¹³ AG ¶ 18.

¹⁴ ISCR Case No. 96-0454 (App. Bd. Feb. 7, 1997).

applicant poses a clear and present danger to national security,¹⁵ or that an applicant poses an imminent threat of engaging in criminal acts. Instead, it is sufficient to show that an applicant has a history of unresolved financial difficulties that may make him more vulnerable to financial pressures.¹⁶

The SOR alleges that Applicant owes \$66,000 on eight delinquent accounts. The allegations are supported by the credit reports in the record, thus establishing the Government's *prima facie* case that Applicant has a history of not paying his debts.¹⁷ He failed to submit sufficient evidence to warrant the application of any of the financial considerations mitigating conditions. In particular, Applicant failed to provide documentary evidence corroborating his testimony that he made a good-faith effort to resolve his delinquent debts, that he has a legitimate basis to dispute the alleged accounts he does not recognize or believes belong to another individual, or that his finances are now under control. At a minimum, an applicant is expected to provide information, oral or documentary, regarding his finances.¹⁸ Without this evidence, the record cannot support a finding mitigation or financial rehabilitation.

Alcohol Consumption

An applicant's history of excessive alcohol consumption becomes a security concern when it serves as direct evidence of questionable judgment and a failure to control impulses.¹⁹ Here, Applicant has a history of alcohol-related incidents dating back to 1985. The three alcohol-related NJPs Applicant received while serving in the Navy and the two more recent alcohol-related arrests in January and November 2012 are disqualifying as alcohol-related incidents away from work.²⁰ These five alcohol-related incidents show Applicant's long history of alcohol issues.

Applicant's testimony that alcohol is no longer a part of his life is not sufficient evidence to mitigate the alcohol consumption security concerns. Applicant, who admittedly turns to alcohol during periods of emotional stress, has not developed any coping mechanisms to deal with stress or depression. He has not participated in any counseling to help him understand his relationship with alcohol or his specific triggers. As such, it cannot be stated with any certainty that he will not engage in similar behavior in the future. Because the underlying motivation for his alcohol use remains, his behavior is not an aberration that can be mitigated by the passage of time.

¹⁵ See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

¹⁶ See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989)

¹⁷ AG ¶ 19(c).

¹⁸ See ISCR Case No. 00-0104 (App. Bd. Mar. 21, 2001).

¹⁹ AG ¶ 21.

²⁰ AG ¶ 22(a).

Personal Conduct

An applicant's personal conduct becomes a security concern when he acts in a way that raises questions about his judgment or his ability to protect classified information.²¹ The SOR cross-alleges the five alcohol-related incidents under this guideline. Because the conduct falls clearly within the alcohol consumption guideline, the security implications of that conduct are most appropriately analyzed under that section. However, of special interest under the personal conduct guideline is any failure to provide truthful and candid answers during the security clearance process. The SOR allegations that Applicant intentionally falsified his October 2013 security clearance application by failing to disclose his January 2012 arrest and his seven other delinquent accounts warrants more scrutiny. While Applicant's disclosures of his criminal and financial histories were incomplete, I find that his omissions were not intentional. Furthermore, his disclosure provided sufficient notice to the Government of possible financial and criminal issues.

Whole-Person Concept

Based on the record, doubts remain about Applicant's ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2. Applicant failed to meet the burdens of production and persuasion necessary to mitigate the security concerns raised by his derogatory financial and alcohol-consumption histories. As a result, Applicant's past conduct indicates a current inability to properly handle and protect classified information.

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, Financial Considerations	AGAISNT APPLICANT
Subparagraphs 1.a - 1.f:	Against Applicant
Subparagraph 1.g	For Applicant
Paragraph 2, Alcohol Consumption:	AGAINST APPLICANT
Subparagraphs 2.a - 2.e	Against Applicant
Paragraph 3, Personal Conduct:	FOR APPLICANT
Subparagraphs 3.a – 3.c:	For Applicant

²¹ AG ¶ 15.

Conclusion

In light the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

Nichole L. Noel
Administrative Judge