



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 14-02278
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith Esq., Department Counsel  
For Applicant: *Pro se*

11/21/2015

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines G (Alcohol Consumption), J (Criminal Conduct), F (Financial Considerations), and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on February 5, 2014. On September 25, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines G, J, F, and E. The DOD acted 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 (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on October 18, 2014, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 29, 2015, and the case was assigned to me on August 31, 2015. On September 9, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing

was scheduled for September 25, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not present any documents or the testimony of any other witnesses. I kept the record open until October 9, 2015, to enable him to present documentary evidence, but he did not submit any additional evidence. DOHA received the transcript (Tr.) on October 6, 2015.

### **Correction of SOR**

Department Counsel moved to amend SOR ¶ 2.a, alleging that Applicant was charged with “Misdemeanor Destruction of Private Property, a Felony,” by deleting the words, “a Felony.” I granted the motion. (Tr. 16-17.)

### **Findings of Fact**

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.a, 1.b, 2.a, 3.a, and 3.b. He denied SOR ¶¶ 3.c-3.f. He did not admit or deny SOR ¶¶ 2.b and 4.d, but those paragraphs cross-allege allegations that he admitted under other guidelines. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 44-year-old electrician employed by a defense contractor since May 2011. He was previously employed by the same defense contractor as a sheet metal worker from January 1991 to July 1993. He does not have a current active clearance. (Tr. 7-8.)

Applicant graduated from high school in June 1989. He served in the Air National Guard from November 1989 to November 1993, when he was honorably discharged. He attended a technical school from April 1996 to April 2000 and was certified as an electrical journeyman. He worked as an electrician in the private sector from January 2000 to October 2010. He was unemployed from October 2010 to May 2011, when he began his current job.

Applicant married in October 1993 and divorced in October 1999. He remarried in June 2001 and divorced in October 2012. He has two sons, ages 13 and 10. He pays child support of \$1,078 per month. (Tr. 27.)

In June 2002, Applicant was interviewed regarding an earlier SCA in which he disclosed arrests in January 1991 for destruction of private property and in March 1991 for driving while intoxicated (DWI). The January 1991 arrest occurred after he punched a hole in the wall of a restroom in a convenience store. He was convicted of a misdemeanor and sentenced to 30 days of community service and probation for one year.

The March 1991 DWI occurred after he consumed about 12 beers at a friend’s house and was stopped by police for driving on the wrong side of the road. He was convicted, fined \$150, and ordered to attend an alcohol safety awareness program

(ASAP). His driver's license was suspended for six months. (GX 3 at 4.) His security clearance investigation was completed in July 2002, but no clearance was granted. (GX 1 at 31.)

Applicant submitted another SCA in August 2013, and he answered "No" to the question, "Have you EVER been charged with an offense involving alcohol or drugs? (Emphasis in original.) (GX 5 at 30.) He did not disclose his March 1991 DWI arrest. He submitted another SCA on February 5, 2014, in which he answered "No" to the same question. (GX 1 at 29.)

Applicant's third SCA was submitted on February 5, 2014, three days after he was arrested for DUI. He had been drinking with co-workers and pulled off the road when he realized he had consumed too much alcohol. A state trooper pulled up behind him and took him to the police station, where a breathalyzer indicated a blood-alcohol content of .15%. He was convicted of DUI and sentenced to five days in jail, which he served on weekends. His driver's license was suspended for one year and he was required to complete a ten-week ASAP program and have an interlock device installed on his vehicle. (Tr. 29-31.)

Applicant's February 2014 DUI arrest was on a Sunday, and he spent the night in jail. On Monday, he reported his arrest to his supervisor and his security office. (Tr. 50-52.) He testified that, based on a conversation with a person in the security office, he did not believe he was required to disclose his DUI arrest in his SCA because he had not yet been formally charged as of the day he submitted it. (Tr. 61-64.)

During a personal subject interview (PSI) in March 2014, Applicant admitted that he was arrested for driving under the influence (DUI) in February 2014 and DWI in March 1991. He told the investigator that he did not disclose his two alcohol-related arrests on his two SCAs because he was not aware that he needed to disclose them. He also told the investigator that he had not consumed alcohol since his DUI arrest in February 2014 and does not intend to consume alcohol in the future. (GX 2 at 5-6.) At the hearing, he testified that he consumes alcohol about once a month but does not drink to intoxication. (Tr. 32.)

In his August 2013 SCA, Applicant answered "No" to following financial questions: "Have any of the following happened? In the past seven (7) years, you had bills or debts turned over to a collection agency? In the past seven (7) years, you have been over 120 days delinquent on any debt not previously entered." (GX 5 at 34.) In his February 2014 SCA, he answered "No" to the same questions. (GX 1 at 33.)

Applicant's February 2014 credit bureau report (CBR) reflected the six delinquent debts that are alleged in SOR ¶¶ 3.a-3.f. He attributed his financial problems to his marital breakup, which left him unable to make the payments on the home mortgage and his credit card accounts. (GX 2 at 7.)

SOR ¶¶ 3.a and 3.b allege the same debt, a delinquent charge account with an electronics store. The debt was sold to another lender and then referred for collection for \$4,001, after it became more than 150 days delinquent. Applicant testified that his last payment on this debt was in 2011, and that the collection agency had no record of the debt. (Tr. 39-41.) The debt is not resolved.

SOR ¶ 3.c alleges mortgage loan payments totaling \$14,667 that were more than 150 days past due. Applicant testified that he had a buyer for a short sale but the lender would not approve it. He owed about \$221,000, and the house sold for about \$186,000 at a foreclosure sale. He has not had any contact with the creditor. The debt is not resolved.

SOR ¶ 3.d alleges a charge account with an online retail store that is more than 120 days past due for \$204. In his answer to the SOR and at the hearing, Applicant asserted that the debt was satisfied in 2013, but he did not provide any documentation to support his assertion. (Tr. 45.) The debt is unresolved.

SOR ¶ 3.e is a telecommunications bill for \$137, referred for collection in January 2014. In his answer to the SOR, Applicant asserted that this debt was satisfied. At the hearing, he testified that he did not return the equipment when he canceled his contract. He contacted the service provider on the day before the hearing, but he provided no documentation showing that the debt is being resolved.

SOR ¶ 3.f alleges a \$775 debt to a discount retail store that became past due more than 150 days and was referred for collection in January 2014. In his answer to the SOR, he stated that the debt was resolved. At the hearing, he testified that he resolved the debt for about \$485, but he provided no documentation to support his testimony. (Tr. 41-42.)

During his March 2014 PSI, Applicant told the investigator that he inadvertently omitted his delinquent debts in his August 2013 SCA. (GX 2 at 7.) In his response to the SOR, he admitted falsifying his two SCAs and stated, "I have no reason but embarrassment." At the hearing, he testified that he did not disclose any delinquent debts in his SCA because he had not been contacted by his creditors and did not think he owed them anything. (Tr. 52.) However, on cross-examination, he admitted that he should have disclosed the foreclosure of the mortgage on the family home, and he testified that he did not know why he did not disclose his delinquent debts in his SCA. (Tr. 54-55.)

## **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants

eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline G, Alcohol Consumption

The SOR alleges that Applicant was arrested on or about February 2, 2014, and charged with DUI (SOR ¶ 1.a), and that he was arrested in March 1991 and charged with DWI (SOR ¶ 1.b). The concern under this guideline 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 following disqualifying conditions under this guideline are potentially relevant:

AG ¶ 22(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

AG ¶ 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.

AG ¶ 22(a) is established by Applicant's DUI and DWI convictions. AG ¶ 22(c) is established, because the evidence reflects that both incidents were the result of heavy drinking before driving.

The following mitigating conditions are potentially relevant:

AG ¶ 23(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

AG ¶ 23(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);

AG ¶ 23(a) is established. Applicant's alcohol-related offenses were not recent or frequent. The first incident occurred more than 14 years ago, and the most recent incident occurred 21 months ago.

AG ¶ 23(b) is applicable to the extent that Applicant has acknowledged his alcohol-related conduct and moderated his alcohol consumption. He has never been diagnosed as alcohol dependent or as an alcohol abuser.

## **Guideline J, Criminal Conduct**

The SOR, as amended, alleges that Applicant was arrested in January 1991 and charged with misdemeanor destruction of private property (SOR ¶ 2.a). It also cross-alleges the DUI and DWI offenses alleged in SOR ¶¶ 1.a and 1.b (SOR 2.b).

The concern raised by criminal conduct is set out in AG ¶ 30: “Criminal activity creates doubt about a person'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.” Applicant's two alcohol-related convictions establish two disqualifying conditions under this guideline: AG ¶ 31(a) (“a single serious crime or multiple lesser offenses”) and AG ¶ 31(c) (“allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted”).

The following mitigating conditions are potentially relevant:

AG ¶ 32(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

AG ¶ 32(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.

AG ¶¶ 32(a) and 32(d) are established. Applicant's most recent DUI conviction was 21 months ago, and he has moderated his alcohol consumption.

## **Guideline F, Financial Considerations**

The SOR alleges six delinquent debts totaling about \$23,785. The concern under this guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be

irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and his CBR establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions under this guideline are potentially applicable:

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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant attributed his financial problems to his marital breakup, a condition beyond his control. However, he has not acted responsibly. He never contacted the lender for the home mortgage loan alleged in SOR ¶ 3.c after the mortgage was foreclosed. He failed to return equipment to the telecommunications provider alleged in SOR ¶ 3.e, and he did not contact the provider until the day before the hearing.

AG ¶ 20(c) is not established. He has not sought or received financial counseling, and his financial problems are not under control.

AG ¶ 20(d) is not established. Although Applicant claimed that he resolved the debts in SOR ¶¶ 3.a, 3.b, 3.d, and 3.f, he provided no documentation to support his claim.



AG ¶ 20(e) is not established. Applicant has not disputed any of the debts alleged in the SOR. Furthermore, he has not disputed the CBRs reflecting the debts he claimed to have resolved.

### **Guideline E, Personal Conduct**

The SOR alleges that Applicant failed to disclose the delinquent debts alleged in SOR ¶¶ 3.a-3.f when he submitted his February 2014 and August 2013 SCAs (SOR ¶ 4.a); failed to disclose his February 2014 DUI and March 1991 DWI arrests in his February 2014 SCA (SOR ¶ 4.b); and failed to disclose his DUI and DWI arrests in his August 2013 SCA (SOR ¶ 4.c). It also cross-alleges the criminal conduct in SOR ¶ 2.a under this guideline (SOR ¶ 4.d).

The concern under this guideline is set out in AG ¶ 15:

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.

The relevant disqualifying condition for Applicant's failure to disclose his DWI and DUI arrests and his delinquent debts is AG ¶ 16(a): "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . ." Applicant admitted the allegations of falsification in his answer to the SOR. At the hearing, he first testified that he was unaware of the debts because he had not been contacted, but admitted that he should have disclosed the debts related to the foreclosure of the mortgage on his home. However, he stopped short of admitting intentional falsification. I have treated his testimony as a denial of intentional falsification.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

At the hearing, Applicant abandoned his earlier inconsistent explanations for not disclosing his delinquent debts in his two SCAs. He admitted that the financial questions were clear and straightforward, and that he should have disclosed his delinquent debts. I conclude that AG ¶ 16(a) is established.

For the reasons set out in the above discussion of Guideline G, I conclude that Applicant's DWI and DUI arrests, cross-alleged under this guideline, establish the following disqualifying conditions under Guideline E:

AG ¶ 16(c): credible adverse information in several adjudicative issue 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; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(a) is not established. Applicant did not disclose his delinquent debts until he was confronted with the evidence in his March 2014 PSI.

AG ¶ 17(c) is not established for Applicant's falsifications. They were not "minor," because falsification of a security clearance application "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App .Bd. Aug. 8, 2011.) They were not infrequent, because he falsified two SCAs and was less than candid during his PSI. His falsifications did not occur under unique circumstances. However, this mitigating condition is established for the conduct alleged in SOR ¶¶ 1.a and 1.b and

cross-alleged under this guideline, for the reasons set out in the above discussion of Guideline G.

AG ¶ 17(d) is not established for Applicant's falsifications, because he has not unequivocally acknowledged his behavior. It is established for DWI and DUI arrests, for the reasons set out in the above discussion of Guideline G.

AG ¶ 17(e) is established for Applicant's DWI and DUI arrests, because he has fully disclosed them. Although he has equivocated about his falsification of his SCAs, his CBRs have fully disclosed financial problems to his supervisors and security officials.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines G, J, F, and E in my whole-person analysis, and I have considered the factors listed in AG ¶ 2(a). After weighing the disqualifying and mitigating conditions under each of the above guidelines, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his alcohol-related arrests and convictions, but he has not mitigated the security concerns raised by his financial problems and falsifications of his SCAs. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline G (Alcohol Consumption): FOR APPLICANT

Subparagraphs 1.a-1.b: For Applicant

Paragraph 2, Guideline J (Criminal Conduct): FOR APPLICANT

Subparagraphs 2.a-2.b: For Applicant

Paragraph 3, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 3.a-3.f: Against Applicant

Paragraph 4, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraphs 4.a-4.c: Against Applicant

Subparagraph 4.d: For Applicant

### **Conclusion**

I conclude that 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.

LeRoy F. Foreman  
Administrative Judge