



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 14-02332 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel  
For Applicant: Mark S. Zaid, Esquire

06/17/2015

**Decision**

WHITE, David M., Administrative Judge:

Applicant had several alcohol-related incidents, and incurred some formerly delinquent debt. He has resolved all of the debt, has no current alcohol problem, and has no recent incidents of security concern. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on February 1, 2014. On September 3, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline G (Alcohol Consumption) and Guideline F (Financial Considerations). The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on September 30, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 28, 2015. The case was assigned to me on February 2, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on February 25, 2015, setting the hearing date for March 17, 2015. I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection, and Hearing Exhibit (HE) I, a Government exhibit list. Applicant offered Exhibits (AE) A through M, which were admitted without objection, and his exhibit list that was marked HE II. HE III is a copy of the statute of which Applicant was convicted, and which was added to the record with consent of both counsel. Applicant and four other witnesses testified on his behalf. I granted Applicant's request to leave the record open until April 6, 2015, for submission of additional evidence. Applicant affirmatively declined to submit additional evidence on that date. DOHA received the transcript of the hearing (Tr.) on March 26, 2015.

### **Findings of Fact**

Applicant is a 34-year-old employee of a defense contractor, where he has worked since October 2012. He is a high school graduate, and has taken some college classes. He is engaged to be married, for the second time, to a woman who has two children. He served a six-year enlistment in the Army, and earned an honorable discharge as a staff sergeant in March 2007. He worked for another defense contractor between his active service and his current job. He has held a security clearance since his Army basic training. (GE 1; AE B; Tr. 64, 79-81.)

Applicant admitted the factual allegations set forth in SOR ¶¶ 1.a, 1.c, and 2.a, with explanations. He denied the remaining allegations, also with explanations, because they contained incorrect details concerning incidents for which he provided accurate information. (AR.) Applicant's admissions and explanations are incorporated in the following findings.

Applicant admitted that he experimented with alcohol during his teenage years, and has consumed alcohol in moderation since becoming an adult. He had two minor incidents involving underage drinking in 1996 and 1998 that led to police involvement, primarily due to the misbehavior of friends with whom he had consumed alcohol. (SOR ¶¶ 1.d and 1.e.) Neither incident resulted in any criminal charges against Applicant, but he and his mother were required to attend an eight-hour class after the first, when he was age 15. (AR; GE 3; Tr. 101-113, 118-121.)

While on active duty in the Army and stationed in Korea in 2003, Applicant was involved in an alcohol-related incident in which he was assaulted by another soldier and injured upon returning to base after a minor dispute over the attentions of a young woman in a bar where they had all been drinking. The other soldier received non-judicial punishment for the assault, but Applicant was not disciplined. Army policy at the time required participation in the Alcohol and Substance Abuse Program (ASAP) after involvement in such an incident, so Applicant self-referred into ASAP. He benefitted

from the program, and significantly reduced the frequency and amount of his alcohol consumption thereafter. (AR; GE 2; GE 3; GE 4; Tr. 113-117, 173-174.)

Applicant married another soldier in 2004. They both left active duty in 2007, after their second deployment to Iraq. Applicant later deployed to Afghanistan as a civilian contractor for about a year to earn some extra money, returning in November 2011. While he was overseas, his wife initiated a legal separation pending divorce. Applicant, while attempting to establish a new social life, was arrested on September 23, 2012, for Driving Under the Influence (DUI). He had driven to a local bar with some friends for a night of socializing, and had arranged for his sister to come and pick them up as their designated driver at the end of the evening. Around midnight he tried to contact his sister, without success. He stopped drinking and waited for about an hour and a half, while continuing to try to contact his sister. Eventually he felt that he was sober enough to drive safely and, having agreed to be responsible to his friends for providing a ride home, left the bar driving his car. He was stopped shortly thereafter for speeding about 10 miles per hour over the limit, and a subsequent breath test revealed his blood alcohol content (BAC) to be .089. The legal limit is a BAC of .08, so he was charged with Driving Under the Influence (DUI) before being released and taken home by the police officer. (AR; GE 1; Tr. 121-126, 175-176.)

Applicant's attorney obtained several continuances in the court proceedings on his DUI charge, during which he underwent an alcohol assessment that resulted in a finding of, "No Significant Problem." He also attended the state's mandatory eight-hour alcohol and drug abuse awareness class and a DUI victims' impact panel to satisfy anticipated court requirements. No other treatment program was either required or recommended. On February 21, 2013, Applicant's DUI charge was dismissed and he pled guilty to the misdemeanor lesser offense of alcohol-related negligent driving. He was sentenced to 90 days in jail, all of which was suspended, and ordered to pay a fine and court fees totaling \$663. He satisfactorily complied with all court requirements and no subsequent criminal or alcohol-related incidents have occurred. (AR; GE 1; HE III; Tr. 126-130.)

Applicant's ex-wife was the primary borrower on the purchase money mortgage loan for the home they owned together during their marriage. As a result of his wife's misappropriation of their marital assets before initiating their separation while he was deployed in Afghanistan, the presiding judge awarded ownership of the home (and debt) to him in the final divorce decree issued in December 2013. During the divorce proceedings, neither Applicant nor his wife made mortgage payments toward the disputed property, and the loan became delinquent as alleged in SOR ¶ 2(a). Applicant remained in contact with the lender during that time, with the understanding that he would enter into a loan modification agreement if he was awarded the property rather than undergo foreclosure. During late January 2014, a good friend from his time in the Army was staying in the home while Applicant was staying with his fiancée at her home. One night while the friend was asleep, a chimney fire started and destroyed the house. Applicant, following legal advice, held out for the higher home insurance payment provided under his policy's "Total Loss" provision instead of accepting the insurer's

initial, lower settlement offer. In the meantime, Applicant entered into a November 2014 loan modification agreement with the mortgage lender that reduced his outstanding principal balance from \$294,365 to \$98,500; and his interest rate from 4.375% to 2%. He has fully complied with these modified loan terms, and the loan is in good standing. On March 13, 2015, the Superior Court adjudicating the insurance claim for the fire damages issued a summary judgment in Applicant's favor, for compensation under the Total Loss provision. Applicant will accordingly receive more than \$405,000 (plus some amount of interest) from his insurance company. (AR; GE 1; AE C; AE E; AE F; AE J; Tr. 132-157.)

The \$406 debt alleged in SOR ¶ 2.b arose from a disputed billing by a doctor's office for an appointment that had to be cancelled because Applicant had been scheduled to see the wrong person to perform the required treatment. He originally thought the clinic's desk staff said that they would take care of the issue, but found it listed as a delinquency on his credit report in connection with applying for this clearance. He found the bill easier to pay than to continue disputing, so he paid it on May 2, 2014. (AR; GE 1; Tr. 131-132.)

Applicant met his current fiancée shortly before his DUI arrest in 2012. Since his home burned down in January 2014, he has been living with her and her children in her home. She works in the healthcare field, and they share an active and healthy lifestyle. They consume alcohol on occasion, but not regularly or to excess. Their financial situation was stable and solvent before Applicant's recent award of more than \$400,000 for his home insurance claim, and a substantial raise in his salary was pending at the time of his hearing. Before issuance of the SOR, Applicant satisfactorily resolved several other previously delinquent debts that were caused by his ex-wife before and during their separation. He had two non-delinquent credit card accounts totaling about \$21,000 that he intended to pay in full from the insurance proceeds. Applicant's financial situation has fully recovered, and should continue to improve in the future. (AR; GE 1; Tr. 82-95, 154, 158-163, 180.)

Applicant provided compelling and uncontradicted evidence of his good military service, conscientious compliance with security procedures, sound judgment, reliability, trustworthiness, and demonstrated commitment to future responsible alcohol consumption and financial responsibility. This included testimony and documentary evidence from his fiancée, fellow soldiers, past and present supervisors and coworkers. (AE A; AE B; AE D; AE G; AE H; AE I; AE K; AE L; AE M; Tr. 39-95.)

### **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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 or 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.

## **Analysis**

### **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 DCs raised by the allegations in the SOR and record 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 stopped for speeding after leaving a bar in September 2012, and his BAC was tested at .089; which was above the legal limit of .08 and resulted in his conviction of alcohol-related negligent driving. He was assaulted and injured in a confrontation after drinking while stationed in Korea in 2003, and had two alcohol-related run-ins with law enforcement while in high school. He admitted having consumed alcohol in excess on a few occasions over the past 20 years. These facts support security concerns under the foregoing DCs.

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

- (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.

Applicant's youthful alcohol experimentation before 1998 raises no present security concerns. The 2003 incident, in which he was injured, resulted in his voluntary ASAP attendance and a significant reduction in recreational drinking. His 2012 DUI arrest resulted from the unexpected inability to contact his sister for a prearranged ride home after an evening with friends at a bar, and his misjudgment about having stopped drinking for long enough to be under the limit. He has been evaluated to have no substance abuse problem, and has only consumed alcohol in moderation since that incident. These incidents do not cast doubt on his current reliability, trustworthiness, or good judgment. Applicant met his burden to establish substantial mitigation under AG ¶ 20(a).

Applicant did not meet the full criteria to establish mitigation under the terms of AG ¶¶ 23 (b), (c), or (d). He has neither met the criteria for, nor been diagnosed with, alcohol abuse or dependence. He benefitted from the substance abuse education programs he attended, but has never been recommended to attend a counseling or treatment program. He is not abstinent, but drinks moderately and responsibly as called for under AG ¶¶ 23(b) and (d). This establishes some additional, partial mitigation under those provisions.

#### **Guideline F, Financial Considerations**

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

At the time of his application for this clearance, Applicant had some delinquent debt issues. This evidence raised security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns. The SOR allegations and evidence do not support any other DC under this guideline.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(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 delinquent mortgage issue was directly related to his ex-wife's financial misconduct and their subsequent divorce proceedings. His medical bill was initially disputed, for a valid reason, then paid. The evidence establishes that these financial issues arose under unique circumstances, are unlikely to recur, and do not reflect on his current reliability and judgment. Applicant established substantial mitigation under AG ¶ 20(a).

Applicant also offered evidence to support mitigation under AG ¶¶ 20(b), (c), and (d) with respect to his formerly delinquent debts. He successfully renegotiated his home mortgage on greatly improved terms, and simply paid off the disputed medical bill rather than have it remain as a potential issue. He is in a solvent and steadily improving financial position, with frugal spending habits that will prevent future issues.

### **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 pertinent facts and circumstances surrounding this case. Applicant is a sincere individual, who has matured after exhibiting some irresponsible conduct in his youth. He accepted accountability for his earlier bad choices and actions, demonstrated responsible conduct over the past several years, and resolved his financial issues. He documented positive permanent behavioral changes and rehabilitation with respect to both financial and alcohol-related issues that supported potential security concerns earlier in his life. His conduct has eliminated the potential for pressure, coercion, or duress, and makes continuation or recurrence of similar problems unlikely. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability for a security clearance.

### **Formal Findings**

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

|                                |               |
|--------------------------------|---------------|
| Paragraph 1, Guideline G:      | FOR APPLICANT |
| Subparagraphs 1.a through 1.e: | For Applicant |
| Paragraph 2, Guideline F:      | FOR APPLICANT |
| Subparagraphs 2.a and 2.b:     | For Applicant |

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE  
Administrative Judge