



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



In the matter of:)
)
) ISCR Case No. 14-02614
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

10/27/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant did not present sufficient information to mitigate security concerns for criminal conduct and alcohol consumption. He did present sufficient information to mitigate financial and personal conduct security concerns.

Statement of the Case

On July 11, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) as part of periodic background investigation to renew a security clearance for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) could not make the affirmative findings required to renew a security clearance. On August 25, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for criminal conduct under Guideline J, alcohol consumption under Guideline G, financial considerations under Guideline F, and personal conduct under Guideline E. These actions were 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 (AG). Applicant acknowledged receipt of the SOR on September 3, 2014.

Applicant answered the SOR on September 20, 2014. He admitted all of the SOR allegations concerning criminal conduct, alcohol consumption, and financial considerations. He denied the two allegations of personal conduct for falsification of responses on his e-QIP. Department Counsel was prepared to proceed on May 27, 2015, and the case was assigned to me on June 8, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 2, 2015, for a hearing on July 29, 2015. Applicant acknowledged receipt of the notice of hearing on July 10, 2015. I convened the hearing as scheduled. The Government offered six exhibits that I marked and admitted into the record without objection as Government exhibits (GX) 1 through 6. Applicant testified. I left the record open for Applicant to submit documents. Applicant's timely submitted two documents which I marked and admitted into the record without objection as Applicant Exhibits (AX) A and B. (GX 7, e-Mail, dated August 17, 2015). DOHA received the transcript of the hearing (Tr.) on August 6, 2015. The record closed on August 17, 2015, on receipt of Applicant's post-hearing submissions.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant's admissions are included in my findings of fact.

Applicant is 61 years old and has worked in a shipyard for a defense contractor as a welder since 1973, over 43 years. He worked on nuclear components on Navy ships most of the time, but because of failing eyesight from welding, he is now an electrical tack welder. He married in 1976 and had two children. His daughter is now 30. His son passed away in 2009. He has three grandchildren. He has been eligible for access to classified information since 1991. His last previous periodic background investigation was in February 2007, and he was last granted eligibility for access to classified information in July 2007. (Tr. 23-28; GX 1, e-QIP, dated July 11, 2012)

The SOR alleges criminal conduct for drug use and possession in 1985, driving under the influence in 1995 and 2012; felon in possession of a firearm in 2006; discharge of a firearm in 2000; alcohol consumption to excess and to the point of intoxication from 1976 until March 2013; registering .039 alcohol content on a vehicle interlock device in March 2013; and driving while intoxicated in 1995 and 2012. It also alleges 15 delinquent debts for student loans, medical bills, credit cards, telephone service, and cable television service; and two allegations of deliberately providing false information in response to financial questions on his security clearance application of July 11, 2012. Applicant admitted all allegations except the falsification allegations.

The SOR lists seven allegations of criminal conduct. In chronological order, the first two offenses happened in 1985 and are linked. (SOR 1.e and 1.g) Applicant and his wife were driving in their car returning from a party in a state neighboring the state where they lived when stopped by the police. Applicant gave the police officer permission to search the car. A significant number of pills were discovered between the front seats of the car. Applicant and his wife told the police office that they were unaware of the pills. The initial tests of the drugs by the police officer were negative for an illegal substance. Applicant was allowed to return home while the drugs were further processed. When the drugs were confirmed as LSD, the neighboring state issued a fugitive warrant for Applicant's arrest. Applicant was informed by his local police that he was listed by the neighboring state as a fugitive from justice. Applicant returned to the neighboring state, pled guilty to the felony offenses of possession of LSD and possession with intent to sell, and was sentenced to 20 weekends in jail, a fine, and five years of probation. He completed all parts of his sentence. Because of his good record in completing the 20 weekends in jail, Applicant only had to serve a little more than 2 years on probation. The fugitive from justice offense was not prosecuted. Applicant also admitted that he was charged with possession of marijuana in 1985 (SOR 1.f) but the charge was dismissed. (Tr. 28-33; GX 2, Personal Subject Interview, dated March 18, 2013 at 5; GX 4, Criminal Record Report, dated April 29, 2012 at 4)

Applicant admits that in 1995, he was charged with driving under the influence of alcohol (DWI). Applicant was taking trash to the dump and had an open bottle of beer between his legs. He had a breathalyzer test with a .08 result. He was found guilty of DWI and was sentenced to probation and a restricted driver's license. (SOR 1.d) Applicant did not stop drinking alcohol after this offense. He voluntarily gave up his driver's license and did not drive a car for seven years. (Tr. 33-35, 45-47)

Applicant admitted SOR allegations 1.b and 1.c concerning the possession of a firearm by a felon, and the discharge of a firearm. Since the LSD offenses in 1985 were felonies, Applicant could not be in possession of a firearm. He was not successful in disposing of a pistol he owned. He instead left it at his father's house. When his father passed away in 2006, he retrieved the pistol. He went to a secluded area and fired the pistol (SOR 1.c)¹. Police were nearby, heard the shots, and confiscated Applicant's pistol. A few months later, Applicant tried to retrieve the pistol from the police. He was told that as a felon he could not possess a firearm. He was charged with possession and transport of a firearm by a felon and sentenced to 12 months in jail (suspended) and a fine. (Tr. 35-4; GX 4, Criminal Record Report)

Applicant's last grant of eligibility for access to classified information was in August 2007. He had submitted a security clearance application (SCA) in February 2007. Since the above offenses happened prior to the submission of the SCA and the adjudication, it is assumed that the criminal offenses were considered during that adjudication process. These offenses will be considered as part of this adjudication because it shows a continuous course of criminal conduct by Applicant.

¹ The date in the SOR is wrong. Applicant testified that the offense happened in 2006 and not 2000.

Applicant admits that he was arrested for DWI in April 2012. Applicant had been drinking beer at his brother-in-law's house. On his way home, he ran off the road. He failed a blood alcohol breathalyzer with a .11 BAC. He was found guilty of DWI and sentenced to 30 days confinement suspended, attendance at the state alcohol abuse program (ASAP), an interlock device on his car for six months, driver's license restrictions, and a fine (SOR 1.a). Applicant completed all parts of the sentence. While in ASAP, he was advised by the counselors that he was an alcoholic. He completed the ASAP which required him to attend the program one day a week for 22 week. Some of the sessions were group sessions and some were individual counseling. He did not drink alcohol while in the program, and passed all tests in the program looking for alcohol consumption. (Tr. 48-52; GX 3, Court Document, date May 10, 2013)

The SOR has three allegations of alcohol consumption; excess consumption of alcohol to the point of intoxication from 1976 until March 2013 (SOR 2.a); an interlock failure in March 2013 (SOR 2.b); and the two DWIs noted above (SOR 2.c). Applicant testified he started drinking beer when he was in his early 20s in the mid-1970s. He only drank beer and drank five to seven days a week. He usually had a beer immediately after leaving work before going home. At home, he had a few more beers depending on his activities that day. He estimates that he drinks between 120 and 160 ounces of beer a week. He was intoxicated at times but does not normally drink to the point of intoxication. He has never gone to work intoxicated. Applicant has not been required to attend any alcohol prevention or counseling programs, except the ASAP program noted above. He does not believe he has an alcohol consumption problem. (Tr. 18-19, 48-51)

After his DWI in 2012, Applicant was sentenced to have an interlock device placed on his car for six months. In March 2013, he was able to start his car to drive to work after he blew into the interlock device. After a few minutes, he was required to blow into the device again. This time his car stopped and he was not able to get it started. His wife had to take him to work. The interlock device registered a .39 BAC when it was checked. He had to have the interlock device on his car for an additional six months. He stopped drinking beer after this incident for about a year. He started drinking beer again in mid-2014, and is now back consuming beer at the rate noted above. (Tr. 52-55)

The SOR lists 13 delinquent debts of security concern. These debts are confirmed by Applicant's SOR response, his admissions, and the credit reports entered into evidence by Department Counsel. (Tr.12-15: GX 5, dated April 9, 2014; GX 6, dated July 28, 2012) The delinquent accounts include two debts in collection to a school for tuition (SOR 3.a and 3.b), medical debts in collection or judgments (SOR 3.c, 3.d, 3.e, 3.f, 3.h, 3.i, 3.k, 3.l, and 3.n) credit card (SOR 3.g), and telephone debts (SOR 3.j, 3.m, and 3.o).

The school tuition debts at SOR 3.a and 3.b are the same debt. The debt is for tuition for courses Applicant has been taking to prepare for a retirement job repairing small engines. He has been paying \$50 monthly on the debt. His last payment was in

mid-July, just before the hearing, and the balance is \$840. (Tr. 58-59; AX A, Statement, dated July 30, 2015)

Applicant always had medical insurance through his employment. He believes the medical debt for \$562 at SOR 3.c may be his medical debt for dental procedures, but he is not sure. He has dental insurance, and his last dental work should have been covered by his insurance. He believes the medical debt at SOR 3.f may also be his debt for medical treatment. Based on the credit report, he does not know who to contact about the debts. (Tr. 58-60) The credit card debt at 3.g has been paid in full. (AX B, Letter, dated July 30, 2015)

Applicant attributes the debts at SOR 3.d, 3.e, and 3.h to 3.o to his son. Applicant's son has the same name as Applicant. His son died in 2009 of a serious infectious disease. Applicant believes his son used his social security number to accumulate the medical and telephone debts. The circumstances of his son's death add credibility to the belief that the son would use Applicant's social security number to incur medical and credit card debt. He did not learn of the debts until confronted with the debts by the OPM security investigator. He did not contact police about his son using his identity, since his son had died by the time he learned of the debts. He contacted some of the creditors for his son's debts but has not been able resolve the debt. The debts he identified as his son's debts have not been paid. (Tr. 59-68).

Applicant was aware he had at least four delinquent debts when he completed the e-QIP in July 2012. He did not know of the rest of the debts or judgments entered against him. He did not list any delinquent debts in response to question 26, asking in the last seven years if he had any judgement entered against him or any delinquent debt more than 120 days delinquent. He knew of four debts. He paid one, was paying another, and he did not know who to pay since most of his known delinquent debts were in the hands of collection agencies. He did not consider them as delinquent and required to be listed on the e-QIP. Also, he did not fully read the question and stopped reading after it said "child support." Since he did not pay child support, he did not read the question further. I find Applicant's testimony on this point credible. Based on Applicant's testimony at the hearing, it is conceivable that he would not read an entire question before answering the question. (Tr. 68-80)

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 must be considered 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 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. 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, 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 for obtaining 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 or protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Analysis

Criminal Conduct

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 (AG ¶ 30). Applicant has a history of criminal conduct dating to 1985. The history included two DWIs, possession of LSD with intent to sell, and felon in possession of a firearm. This information raises security concerns and questions about Applicant’s judgment, reliability, trustworthiness, and his ability and willingness to comply with laws, rules, and regulations. This information is sufficient to raise the following Criminal Conduct Disqualifying Conditions under AG ¶ 31:

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

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

I considered the following Criminal Conduct Mitigating Conditions under 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

(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.

The mitigating conditions do not apply. Most of Applicant's criminal offenses happened as early as 1985 and were considered in the 2007 decision to grant him eligibility for access to classified information. However, the DWI offense in 2012 shows that he has continued his criminal course of conduct. While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents to show rehabilitation, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. There must be an evaluation whether there is a change of circumstances or conduct sufficient to indicate a finding of reform or rehabilitation. Applicant has not presented any information to show he has been rehabilitated. He continues to consume alcohol, which could lead to further criminal offenses. His past and present criminal conduct reflects adversely on his current reliability, trustworthiness, or good judgment. Applicant has not mitigated the criminal conduct security concerns.

Alcohol Consumption

Excessive alcohol consumption is a security concern because it 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)

The two DWIs were alleged as alcohol consumption security concerns. Applicant was charged with DWI in 1995 and again in 2012. In addition, he had a car interlock device failure in 2013. These incidents raise Alcohol Consumption Disqualifying Conditions 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).

The mitigating conditions under alcohol consumption are similar to the mitigating conditions for criminal conduct. They consider the passage of time, the circumstances

of the offense, and rehabilitation. I considered the following Alcohol Consumption Mitigating Conditions under 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

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of action taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).

These mitigating conditions do not apply. Applicant completed all aspects of his sentence for the 2012 DWI. Sufficient time (six months) has passed since the interlock device was reactivated after the failure in March 2013, so the device has been removed from his car. However, Applicant continues to consume significant amounts of beer almost daily. He was told he was an alcoholic, but he continues to consume alcohol. He is not in any rehabilitation or aftercare programs. His alcohol consumption continues to cast doubt on his reliability, trustworthiness, and good judgment. Applicant failed to present sufficient information to mitigate the security concerns for alcohol consumption.

Financial Considerations

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, thereby raising 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant's history of delinquent debts is documented in his credit report, the OPM interview, and his SOR response. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security

concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises both an inability and an unwillingness to pay delinquent debt.

I considered the following Financial Consideration Mitigating Conditions under 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;
- (b) the conditions that resulted in the financial problems 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 has initiated a good-faith effort to repay the 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 provided documented proof to substantiate the basis for the dispute or provide evidence of actions to resolve the issue.

The mitigating conditions apply. Applicant credibly testified that most of the delinquent debts (SOR 3.d, 3.e, and 3.h to 3.o) were incurred by his son, who had the same name as Applicant, using Applicant's social security number. His son passed away in 2009, and Applicant did not learn of the delinquent debts until informed of them by a security investigator. Of the debts that are attributed to Applicant, two are duplicates and being paid (SOR 3.a and 3.b); one is paid (SOR 3.g). Applicant does not have sufficient information concerning the two remaining debts to initiate payment.

Applicant has shown that he acted reasonably and responsibly under the circumstances to learn about the debts and try to resolve the financial issues. While he has not shown that he received financial advice or counseling, his debts are being resolved or under control. Applicant has been reasonable and responsible in regard to his finances. He presented sufficient information to mitigate security concerns for financial considerations.

Personal Conduct

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

Applicant provided no derogatory financial information on his 2012 e-QIP. As noted in the SOR and the credit reports, Applicant had delinquent debts. His failure to list his delinquent debts raises the following Personal Conduct Disqualifying Condition under AG ¶ 16:

(a) the deliberate omission concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied intentional falsification for failing to list any delinquent debts on his security clearance application. Applicant acknowledged that at the time he completed his e-QIP, he knew he had some delinquent debt. He told the OPM investigator that he was unaware of his debts and believed that most of them were incurred by his son using his name and social security number. He also did not completely read the financial questions on the e-QIP before providing his answer. As soon as he saw the words "child custody", he stopped reading and answered "no." I found that Applicant credibly testified that he did not fully read the questions before answering. He did not deliberately with intent to deceive provide false information on the state of his finances.

While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. I find Applicant did not deliberately fail to provide correct and accurate financial information on the security clearance application. I find for Applicant as to personal conduct.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and the 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's over 43 years of service in a shipyard supporting the Navy. Applicant has a history of criminal conduct and alcohol consumption. Applicant has not presented adequate information to establish that sufficient time has passed from the incidents to show he has been rehabilitated and ceased his criminal conduct and excess consumption of alcohol. Applicant's history shows that he may not be reliable and trustworthy and have the ability to protect classified information. The record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated alcohol consumption and criminal conduct security concerns. He mitigated financial and personal conduct security concerns.

Formal Findings

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

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a – 1.g:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a – 2.c:	Against Applicant

Paragraph 3, Guideline F: FOR APPLICANT

Subparagraphs 3.a – 3.o: For Applicant

Paragraph 4, Guideline E: FOR APPLICANT

Subparagraphs 4.a – 4.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge