



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-05166

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel

For Applicant: *Pro se*

02/29/2016

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations and alcohol consumption security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 15, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations) and G (alcohol consumption). The action was taken under Executive Order (EO) 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 responded to the SOR on June 25, 2015, and requested a hearing before an administrative judge. The case was assigned to me on November 4, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 12, 2015, scheduling the hearing for December 7, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in

evidence without objection. Applicant testified, but he did not submit any documentary evidence. The record was held open for Applicant to submit additional information. He submitted an e-mail and an attached document, which were marked Applicant's Exhibits (AE) A and B, and admitted without objection. DOHA received the hearing transcript (Tr.) on December 22, 2015.

### **Findings of Fact**

Applicant is a 29-year-old employee of a defense contractor. He has worked for his current employer since February 2012. He served in the U.S. military from 2004 until he was honorably discharged in 2010. He deployed four times while in the military. He attended college for a period, but he has not earned a degree. He is divorced without children, but the woman he is cohabitating with has two children.<sup>1</sup>

Applicant was arrested in March 2009 and charged with driving under the influence (DUI) of alcohol. His blood alcohol concentration (BAC) was about .08%. He pleaded guilty to the lesser charge of reckless driving. He received a fine, probation for three years, and he was ordered to attend substance abuse classes. He also received nonjudicial punishment in the military for his conduct. Applicant stated that he was assisting a fellow service member who had too much to drink.<sup>2</sup>

Applicant was still on probation in March 2012 when he was arrested and charged with DUI. His BAC was about .12%. He pleaded guilty to DUI. He was sentenced to a fine, 96 hours confinement, 10 days of public service, probation for 5 years, and he was ordered to attend an 18-month multiple-conviction program. Applicant completed all the requirements of his probation. In January 2016, his attorney petitioned the court to terminate Applicant's probation early. The attorney noted that he believed the motion would be granted.<sup>3</sup>

Applicant admitted that he should not have been driving after drinking. He stated that his first conviction did not deter him because the punishment was not severe. He stated that the second arrest and conviction opened his eyes, and he asserted that his alcohol-related criminal conduct will not be repeated. He stated that he continues to drink responsibly, but he does not drink and drive.<sup>4</sup>

The SOR alleges five delinquent debts totaling \$25,061. The debts are substantiated by credit reports and Applicant's admissions.<sup>5</sup>

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<sup>1</sup> Tr. at 46-48, 54-60; GE 1.

<sup>2</sup> Tr. at 13-14, 20-25; Applicant's response to SOR; GE 1, 2.

<sup>3</sup> Tr. at 14, 22-28, 52-53; Applicant's response to SOR; GE 1, 2; AE B.

<sup>4</sup> Tr. at 19-28; Applicant's response to SOR.

<sup>5</sup> Applicant's response to SOR; GE 1, 3-6.

Applicant testified that he made some payments toward the \$3,050 delinquent debt alleged in SOR ¶ 1.a, but not within the last six months. He stated that he believed the balance had been reduced to about \$2,600. He did not provide any supporting documentation. A credit report from August 31, 2015, listed the debt with a balance of \$3,050.<sup>6</sup>

In his June 2015 response to the SOR, Applicant wrote that he had a \$100 payment plan for the \$520 debt alleged in SOR ¶ 1.b. He testified that his payment plan was \$105 every three months and that he made one payment, reducing the balance to \$416. He did not provide any supporting documentation, but the August 2015 credit report shows the date of last payment as June 2015 and a balance of \$416.<sup>7</sup>

Applicant stated that he paid the \$1,096 delinquent debt (SOR ¶ 1.c) to a collection company on behalf of a telecommunications company in 2014. He did not provide any supporting documentation. The debt is listed by Experian on the December 2012 combined credit report. The date of last action is reported as October 2012. The debt is reported by Equifax in the September 2014 and February 2015 credit reports. The date of last action is reported as April 2008, and the reports carry the annotation: "Consumer disputes this account information." The debt is not listed on the August 2015 Equifax credit report.<sup>8</sup>

SOR ¶ 1.d alleges a deficiency balance of \$17,462 on a car loan after the car was repossessed in 2009. Applicant stated that his mother was supposed to make the loan payments from his account while he was deployed. He found out after he returned from deployment that she had not made the payments for several months, and the car had been repossessed. Applicant stated that he made payments toward the deficiency for about a year after the car was repossessed, but then he stopped. He did not provide any supporting documentation.<sup>9</sup>

Applicant admitted owing the \$2,933 delinquent debt alleged in SOR ¶ 1.e. The debt is unresolved. He stated that he plans to pay all his delinquent debts. He attributed his financial problems to being unemployed for about 18 months after he was discharged from the military. Applicant owes federal income taxes from tax year 2014. He stated that he established a payment plan of \$87 per month toward a tax debt of about \$1,652. He stated that he will likely owe the IRS for tax year 2015. He has not received financial counseling.<sup>10</sup>

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<sup>6</sup> Tr. at 28-30; Applicant's response to SOR; GE 3-6.

<sup>7</sup> Tr. at 31-33; Applicant's response to SOR; GE 3-6.

<sup>8</sup> Tr. at 33-37; Applicant's response to SOR; GE 3-6.

<sup>9</sup> Tr. at 37-43; Applicant's response to SOR; GE 1, 3-6.

<sup>10</sup> Tr. at 44-52, 58; Applicant's response to SOR; GE 3-6. The unpaid taxes were not alleged in the SOR. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be used in assessing Applicant's overall financial situation, in the application of mitigating conditions, and in the whole-person analysis.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, 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, administrative judges apply the guidelines 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."

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 the 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 safeguard 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 EO 10865 provides that adverse 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

### Guideline G, Alcohol Consumption

The security concern for alcohol consumption 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 guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

- (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 has two alcohol-related incidents and arrests. AG ¶¶ 22(a) and 22(c) are applicable.

AG ¶ 23 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (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); 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 most recent alcohol-related arrest was in March 2012. He completed alcohol classes. He is still on probation or recently discharged from probation. He has never been diagnosed as alcohol dependent, so complete abstinence is not required. He stated that he now drinks in moderation, and he does not drink and drive. However, Applicant did not learn from his first arrest. His second arrest occurred while on probation. There are no mitigating conditions sufficiently applicable to dispel security concerns about Applicant's alcohol use.

## **Guideline F, Financial Considerations**

The security concern for financial considerations 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant had delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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 was unemployed for a period, and his mother did not pay his car loan while he was deployed. Those events were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant established that he paid \$105 toward one debt, and the debt alleged in SOR ¶ 1.c is not listed on the most recent credit report in evidence. It may have been paid, as Applicant stated, or it may have fallen off his credit report due to age. Applicant did not submit documentary evidence of any other payments. His finances are not significantly improving, as evidenced by his failure to pay his taxes when they were due.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. AG ¶ 20(e) is applicable to the debt alleged in SOR ¶ 1.c. I find that financial considerations concerns remain despite the presence of some mitigation.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and G in my whole-person analysis.

I considered Applicant's honorable military service, and particularly his deployments. However, he was arrested for DUI while still on probation for an alcohol-related offense, and he has unresolved financial problems.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations and alcohol consumption 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 G:	Against Applicant
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline F:	Against Applicant
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against 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.

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Edward W. Loughran  
Administrative Judge