



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 15-02412
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

April 20, 2016

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a history of financial delinquencies and was convicted of driving under the influence of alcohol or drugs (DUI) in 2010. He failed to mitigate the financial consideration and alcohol consumption security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 3, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On November 3, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline G, Alcohol Consumption. The action was taken under Executive Order (EO) 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) effective September 1, 2006.

Applicant answered the SOR on November 24, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on January 19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 21, 2016, scheduling the hearing for March 2, 2016. The hearing was held as scheduled.

The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered Exhibits (AE) A and B, which were admitted without objection. Applicant testified on his own behalf. The record was left open until April 6, 2016, for Applicant to submit additional exhibits. Applicant did not present any further documentation and the record closed on April 6, 2016. DOHA received the transcript of the hearing (Tr.) on March 9, 2016.

### **Findings of Fact**

Applicant is 48 years old. He has been employed with a Government contractor since August 2014. He was unemployed from April 2013 to August 2014, after he was terminated for cause by his previous employer. He served in the Navy from 1988 through 1994 and achieved the rate of E6. He is married to his second wife and has four children. (GE 1; AE B.)

### **Financial Considerations**

The Government alleged that Applicant is ineligible for a clearance, in part, because he has made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR alleged that Applicant was delinquent in payments to four creditors, totaling \$16,203. In his Answer, Applicant admitted SOR subparagraphs 1.a, 1.b, and 1.c. He denied SOR subparagraph 1.d, because he was unaware of that debt. All of the delinquencies were listed in credit reports dated September 11, 2014; February 27, 2015; January 4, 2016; and February 28, 2016. (GE 3; GE 4; GE 5; GE 6.)

Applicant attributes his financial problems to his unemployment from April 2013 to August 2014. He testified he was terminated by his employer in 2013, after he failed a urinalysis. He claimed he did not use illegal substances knowingly. However, his company had a zero tolerance policy and Applicant's employment was terminated as a result of the positive drug test.

Applicant's debts consist of the following: a delinquent credit card debt in the amount of \$7,478 (SOR subparagraph 1.a), which has been delinquent since 2012; a vehicle loan, of which the remainder of \$7,176 was placed for collections after the vehicle was repossessed and sold at auction (SOR subparagraph 1.b); another delinquent credit card debt in the amount of \$1,473 (SOR subparagraph 1.c), which has been delinquent since February 2013; and a \$76 debt owed to Applicant's city of residence, which has been delinquent since 2012 (SOR subparagraph 1.d). Applicant testified that he intends to resolve all of his delinquencies, but that his current budget

does not allow for him to resolve these debts at the present time. He has little money left over after he meets his monthly expenses.

## **Alcohol Consumption**

The Government alleged that Applicant is ineligible for a clearance due to his alcohol consumption. Applicant admitted SOR allegation 2.a. (Answer.)

Applicant was arrested in October 2010 and charged with DUI. He had been drinking at a football game and consumed eight beers over a 10 hour period. He took a party bus from the game to his brother-in-law's house. He waited a couple more hours and then attempted to drive his vehicle home. When he was stopped by the police for missing registration stickers, he was given a breathalyzer test. His blood alcohol content was 0.11%. He was arrested and later found guilty of DUI. Applicant was required to complete an 18-month 2<sup>nd</sup> offender program<sup>1</sup>; perform three days of community service; complete a victim impact panel; and pay fines and fees. He was placed on probation for five years. He completed all requirements of his sentence and he was released from probation. (AE A; GE 2; Tr. 24-29.)

Applicant stopped drinking alcohol for two years after his DUI arrest. He now consumes approximately one alcoholic drink per month. He no longer consumes alcohol to the point of intoxication. (Tr. 28-29.)

## **Mitigation**

Applicant earned two Good Conduct Medals; four letters of Commendation; a Navy "E" Service Ribbon; a Sea Service Deployment Ribbon; a Southwest Asia Service Medal; and a National Defense Service Medal during his Navy service. He held a security clearance, without incident, from 1986 to at least 1993. (AE B.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 AG ¶ 2(a) describing 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

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<sup>1</sup>FBI records show Applicant was previously arrested and charged with a June 2002 DUI. It does not show the disposition of that charge. (GE 2.) This alcohol-related conduct will not be considered for disqualifying purposes under Guideline G, as it was not alleged, but will be considered when examining the mitigating evidence.

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 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, 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 clearance 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 as to 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 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. Two are potentially applicable in this case:

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

Applicant's financial problems, identified in allegations 1.a through 1.d, demonstrate that Applicant failed to address his financial obligations in a responsible manner for a four-year period from 2012 to present. The above disqualifying conditions apply.

Five Financial Considerations mitigating conditions under AG ¶ 20 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's financial delinquencies, as alleged on the SOR, extend from 2012 or 2013 to present, and remain unaddressed. Applicant lacks a track record of financial responsibility that would suggest future delinquencies are unlikely to occur. Given his past financial problems, I cannot find that future financial problems are unlikely to occur again. Applicant's financial history continues to cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) is not applicable.

Applicant explained that his unemployment contributed to his financial delinquencies. However, he was unemployed after he was terminated after failing a urinalysis test, a situation which was not beyond his control. While Applicant contends

he was not using illegal substances, I find his claim incredible. Further, to be fully applicable, AG ¶ 20(b) requires that the individual act responsibly under the circumstances. Applicant did not act responsibly by ignoring his delinquent debts since 2013. AG ¶ 20(b) does not provide mitigation.

Applicant did not present evidence that he attended formal financial counseling. Further, he failed to present clear indications that his financial problems are under control or are being resolved. AG ¶¶ 20(c) and 20(d) do not mitigate the concerns.

Applicant did not present evidence to show that he formally disputed any allegations. AG ¶ 20(e) does not provide mitigation.

### **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 disqualifying conditions raised by the 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 convicted of a DUI incident in 2010, after he consumed alcohol to the point of impaired judgment. The DUI incident raises security concerns under AG ¶¶ 22(a) and 22(c).

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns. The following mitigating conditions have been considered:

(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.

None of the above mitigating conditions fully apply. Applicant has been arrested twice for DUI. His arrests span eight years. He was only recently released from probation. In this instance, not enough time has passed since his 2010 DUI, to find that it is unlikely that he will not drive after becoming intoxicated again. He is beginning to establish a pattern of responsible use, but it is too soon to conclude that Applicant fully established mitigation under the terms of AG ¶¶ 23(a) or 23(b). Although Applicant has participated in court-ordered alcohol treatment, he has a history of recidivism. He has not attended inpatient or outpatient counseling, or rehabilitation, or offered a favorable prognosis by a qualified medical professional since his 18-month court-ordered treatment was completed, and he resumed the use of alcohol. AG ¶¶ 23(c), and 23(d) do not apply.

### **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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant honorably served in the Navy and successfully held a security clearance for many years. However, he failed to acknowledge the seriousness of his financial situation. Further, he has been arrested twice for DUI. As a result, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated either the Financial Considerations or 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 F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge