



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



In the matter of:

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) ISCR Case No. 08-06186
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Applicant for Security Clearance

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel

For Applicant: *Pro se*

July 6, 2011

Decision

WHITE, David M., Administrative Judge:

Applicant committed four alcohol-related driving offenses between 1991 and 2009. He had about \$12,000 in gambling-related debt discharged in a 2002 bankruptcy, and continues to gamble on a regular basis, while over his borrowing limit on a number of credit cards. He falsified his security clearance application concerning gambling-related problems. His previous security clearance was revoked for similar reasons in 2004, yet the conduct continued. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on April 9, 2009¹ On August 18, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline G (Alcohol Consumption), Guideline F (Financial Considerations), and Guideline E (Personal

¹Item 4.

Conduct).² 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 3, 2009, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on February 8, 2011. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on February 14, 2011, and returned it to DOHA. On February 28, 2011, he submitted a statement objecting to Department Counsel's assertion that he continues to drink, and stating that he had not consumed any alcohol since April 2009. He did not request additional time to respond, and expressed no objection to my consideration of the evidence submitted by Department Counsel. On March 7, 2011, Department Counsel indicated that she had no objection to my consideration of Applicant's response to the FORM. I received the case assignment on March 13, 2011.

Findings of Fact

Applicant is a 49-year-old employee of a defense contractor, where he has worked as a mail room and office services clerk since December 2001. He has no military service. He was granted a security clearance in 1996, while employed by a different defense contractor. His security clearance was revoked in August 2004, as further discussed below. He has never married, has no children, and lives with his mother in her home. He attended a vocational institute for three months in 1988.⁵ In his response to the SOR, he admitted each allegation.⁶ Applicant's admissions, including his responses to DOHA interrogatories,⁷ are incorporated in the following findings.

²Item 1.

³Item 3.

⁴The Government submitted 11 Items in support of the SOR allegations.

⁵Item 4.

⁶Item 3.

⁷Item 6.

Applicant was arrested on April 22, 2009, and charged with Aggravated Driving While Intoxicated (DWI) First Offense, Speeding 21-25 miles per hour over the Speed Limit, and a traffic lane violation. The Aggravated DWI charge was later amended to DWI First Offense, of which Applicant was convicted on December 9, 2009, after pleading guilty. The other two charges were then dismissed. After successful completion of a drug court program that included 11 months of treatment and supervised probation, Applicant was sentenced to 90 days in jail, with 89 days suspended and the other day converted to 48 hours of community service, and fined on December 13, 2010. No details concerning the drug court treatment program were submitted by Applicant, but on February 28, 2011, he claimed to have consumed no alcohol since his April 22, 2009 arrest.⁸

Applicant was also arrested and charged with DWI in September 2003. That charge was dismissed for reasons that were not made part of the record. He was arrested and charged with Reckless Driving and Eluding a Police Officer in September 1998, when he drove after drinking alcohol. He pled guilty to Careless Driving, and was fined. He pled guilty to DWI after being arrested in August 1991, and received probation. In December 2000 and May 2001, Applicant made threatening telephone calls to a coworker and former coworker after drinking alcohol. He was terminated from his previous employment as a result of the earlier call.⁹

Applicant filed for Chapter 7 bankruptcy relief in October 2001, listing total liabilities of more than \$24,000. About half of this debt total represented borrowed funds that Applicant lost while gambling. Applicant continued gambling on a regular basis after his debts were discharged in January 2002, and still does so. In response to DOHA interrogatories in March 2009, he said that he still gambled monthly, spending \$100 from his salary, and that he no longer used credit card cash advances to gamble. His credit report, obtained on February 19, 2009, reflected a revolving credit limit of \$9,556 and an outstanding revolving credit balance due of \$10,557. None of the accounts were reported to be delinquent, however. His personal financial statement, submitted in March 2009, reported monthly net income of \$2,000; monthly living expenses of \$500; a total of \$10,360 owed on seven different credit cards, and only \$500 in bank savings. Applicant's only other asset was a car worth \$17,800.¹⁰

When Applicant completed his most recent security clearance application, on April 9, 2009,¹¹ he answered "No" to question 26.o, which asked whether he had "EVER experienced financial problems due to gambling?". Applicant admitted that he deliberately failed to disclose that half of the debt discharged in his 2002 bankruptcy was gambling-related. He would reasonably be expected to understand the security

⁸AR; Item 7; Item 10; Item 11; FORM Response.

⁹AR; Item 4; Item 6; Item 9.

¹⁰AR; Item 6; Item 8; Item 9.

¹¹The SOR incorrectly alleges that Applicant certified his SF 86 on April 29, 2009, vice April 9.

significance of that information, since it formed one of the main reasons his prior security clearance was revoked. He also would have known the security significance of falsifying that answer since another major reason for the earlier revocation was his deliberate failure to disclose material information in response to three questions on the SF 86 he submitted in February 2002. The DOHA administrative judge who revoked Applicant's security clearance in August 2004 found against Applicant on all allegations in that earlier SOR, under Guidelines G (Alcohol Consumption), F (Financial Considerations), J (Criminal Conduct), and E (Personal Conduct).¹²

Applicant's supervisor is also his Facility Security Officer. His supervisor submitted a letter, dated September 3, 2009, stating that he had supervised Applicant for over two years. He described Applicant's responsibilities as providing proficient, courteous, and reliable support to all divisions and employees at their facility, and handling all incoming and outgoing mail. He described Applicant as organized, efficient, extremely competent, and having excellent rapport with fellow employees, customers, and vendors. He concluded by saying that he highly recommended Applicant for a clearance because it would allow Applicant to better assist and support the security department.¹³ Applicant submitted no other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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

¹²Item 3; Item 4; Item 9: ISCR Case No. 02-33326 (August 12, 2004).

¹³Item 5.

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 DC supported by the SOR allegations and asserted by Department Counsel is:

(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.

Applicant's three arrests for DWI in 1991, 2003, and 2009, another alcohol-related driving offense in 1998, and alcohol-related threatening telephone calls in 2000 and 2001 establish a long, troubled pattern that supports substantial security concerns

under AG ¶ 22(a). Accordingly, the burden is shifted to Applicant to mitigate those security concerns.

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 was involved in four alcohol-related driving offenses and two other alcohol-related incidents for which he lost his prior job, over an 18-year period. The most recent DWI offense was about two years ago, and occurred less than two weeks after he submitted his present application for a clearance. None of these alcohol-related incidents were shown to have occurred under unusual circumstances. His choice to continue alcohol consumption, after the 2004 revocation of his security clearance based in part on his previous drinking problems, precludes a finding that such incidents are unlikely to recur. Accordingly, AG ¶ 23(a) does not provide mitigation.

Applicant asserts that he has not consumed alcohol to the point of intoxication since April 2009, but insufficient time has passed to establish mitigation under AG ¶ 23(b), given the duration and nature of his history of alcohol abuse. Similarly, there is not sufficient evidence to support mitigation under AG ¶¶ 23(c) or (d). Applicant resumed drinking after each of his alcohol-related incidents until the most recent, and failed to submit documentation of participation in counseling or treatment since then. He provided no current favorable prognosis by a duly qualified medical professional or

social worker, and was under close drug court supervision and probation for all but the last two months of his claimed period of abstinence.

Guideline F, Financial Considerations

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

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The record evidence established security concerns under one Guideline F DC, as set forth in AG ¶ 19:

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant's discharged more than \$24,000 in debt during his 2002 bankruptcy, about half of which involved credit card cash advances used for gambling. He continues to gamble on a regular basis, but claims that he only spends \$100 per month from his salary in doing so. The credibility of this claim is undermined by his being at or over his credit limit on seven different credit cards, with only \$500 in savings despite a \$1,500 monthly net surplus of income over living expenses. He further attempted to conceal gambling losses by denying gambling-related financial problems on his most recent SF 86. This evidence raises substantial security concerns under AG ¶ 19(i), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

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 offered no evidence to support application of any of these MCs. He continues to gamble, and his financial situation supports the conclusion that he has borrowed more than \$10,000 on credit cards and spends almost three-quarters of his net income pursuing such activities. He offered no other explanation for how or where he spent all those funds while paying no rent, living with his mother, and being fully employed in his current position for almost ten years.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The potentially disqualifying condition alleged in this case is:

(a) 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 clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant falsely answered "No" to Question 26.o on his security clearance application, which asked if he had ever experienced financial problems due to gambling.

He admitted that he deliberately answered that question falsely. Furthermore, his prior security clearance was revoked in August 2004 due, in significant part, to his falsification of answers to three questions on his February 2002 security clearance application. Serious security concerns under AG ¶ 16(a) were raised by these facts.

Applicant offered no evidence that would tend to support any mitigating condition under Guideline E. After careful review of the record, I find that none of them 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 pertinent facts and circumstances surrounding this case. Applicant is a mature, accountable adult who voluntarily chose to engage in the conduct of concern. This conduct has spanned the past twenty years, and continues to date. He committed his most recent DWI in April 2009, shortly after applying for a security clearance that had been revoked in 2004 due, in part, to his earlier string of alcohol-related offenses. His claimed period of abstinence since then was largely under the close supervision of a drug court program. He continues to gamble regularly, and the evidence indicates that his ongoing losses are substantially larger than he will admit. He falsified his current SF 86 to avoid disclosing his gambling-related financial problems. Such losses, and falsifying his previous security clearance application, were also significant reasons underlying the revocation of his previous clearance. The likelihood of continuation or recurrence of irresponsible conduct and the ongoing potential for exploitation or duress have not been refuted. Applicant did not demonstrate rehabilitation or other permanent behavioral changes. His current supervisor's opinion that he would be a more valuable employee if he was granted a security clearance is insufficient to establish his eligibility for one.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his alcohol consumption, financial considerations, and personal conduct.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	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.

DAVID M. WHITE
Administrative Judge