



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



In the matter of )  
)  
) ISCR Case No. 08-07337  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel

For Applicant: *Pro se*

May 21, 2009

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guidelines for financial considerations, alcohol consumption, and criminal conduct. It is not clearly consistent with the national interest to allow Applicant access to classified information. Accordingly, his request for a security clearance is denied.

On January 4, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance required as part of his employment with a defense contractor (Item 4). After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request.

On November 7, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations), Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Revised Adjudicative Guidelines (AG). Applicant received the SOR (Item 1) on November 17, 2008 (Item 2). He signed his Answer to the SOR (Item 3) on November 25, 2008, in which he denied allegations 1.i., 2.d., 2.f., 3.a., 3.b., and 3.d.<sup>2</sup> He noted that he was "not aware" of the charges listed at allegation 2.a.(2) and 2.b.(3). I construe these statements as denials of the cited portions of allegations 2.a. and 2.b. Applicant also requested an administrative decision without a hearing.

DOHA Department Counsel submitted a file of relevant material (FORM)<sup>3</sup> on January 16, 2009, in support of the Government's preliminary decision. Applicant received the FORM on January 29, 2009. He was given 30 days from the date he received the FORM to file a response, but did not respond. The case was assigned to me on April 23, 2009.

### **Procedural Ruling**

Department Counsel included in the FORM a Motion to Amend the SOR. The Applicant had notice of the Motion as it was included in the FORM sent to him by Department Counsel. The Motion requests the following changes:

- Strike allegation 1.a., because it duplicates allegation 1.h.;
- Strike "January 1998" in allegation 2.d. and insert in its place "June 1999";
- Strike "1997" in allegation 3.a. and insert in its place "1976."

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

<sup>2</sup> Applicant noted a typographical error in the SOR numbering, which does not include an allegation labeled 1.c.

<sup>3</sup> See Directive, Enclosure 3, § E3.1.7. The FORM included nine documents (Items 1-9) proffered in support of the Government's case.

The intent of the requested change is not substantive, but only to correct typographical errors and delete duplications. The Government's Motion is granted.

### **Findings of Fact**

Applicant's admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the FORM submitted by the Government, I make the following additional findings of fact.

Applicant is 53 years old. He married in 1988 and divorced in 1990, and listed no children on his January 2008 security clearance application.<sup>4</sup> He received an Associate in Science degree in 1986. Since 1997, he has worked as a network technician, machine operator, printing press operator, cellular technician, microwave technician, and in construction. Many of these jobs were short-term. In November 2007, he began working in his current position as an electronics technician, and submitted his security clearance application shortly after. This is his first application for a security clearance (Item 4).

Applicant earns an hourly wage of \$15. In his Personal Financial Statement (PFS) of July 2008, he lists gross monthly wages of \$2,674, which equals approximately \$32,000 gross annual income. Applicant's wage statement for the two-week period of August 19 – 31, 2008, lists 147 hours, indicating that he works overtime. After deductions, his net monthly income is \$1,526. Applicant listed \$1,390 in monthly expenses in his PFS, as well as monthly debt payments of \$20, leaving a monthly net remainder of \$115 (Item 8).

The SOR alleges \$5,320 in delinquent debt, as well as unpaid federal income tax, which Applicant estimates at \$5,000 (SOR; Item 8, page 141). Applicant's debts became delinquent between 2002 and 2008 (Items 5 and 6). He admits to 11 of the 12 SOR debts, denying only allegation 1.l., a debt of \$732. The February 2008 credit bureau report (Item 6) shows that this debt for family/child support has been delinquent since 2002. Applicant lists it as a garnishment of \$422.50 per month in his Interrogatory response (Item 8, page 141), but no such garnishment appears on his pay check (Item 8, page 144-145). In his response to DOHA Interrogatories, Applicant supplied proof of payments of \$10 in September 2008 to the creditors listed at allegations 1.d., and 1.h., and payments of \$30 on the debt at allegation 1.k. Applicant supplied evidence of agreements with the creditors at allegations 1.b. and 1.g., but did not provide proof that he has made payments on these payment plans (Item 8). The record includes no evidence of plans or payments made on the remaining debts.

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<sup>4</sup> Applicant apparently owes "child/family support" (allegation 1.l.; Items 5 and 6), but the record is silent as to the party or parties to whom Applicant owes this obligation.

Applicant failed to file his federal income tax returns for tax years 2002 and 2006. He did not provide a reason, other than his Interrogatory response, "I meant to file but I just procrastinated. This was my fault, and I have filed for the other years, before and after." (Item 8 at p. 66). He was in touch with the Internal Revenue Service (IRS) at the time he submitted his Interrogatory response in September 2008, and noted that after he files the returns, the IRS will arrange a payment plan (Item 8 at p. 66).

Applicant began drinking alcohol at age 21, in 1976. From that time, to approximately Spring 2007, he drank two to three times per week, usually eight to ten beers each time (Item 8). He has been arrested on charges of Driving Under the Influence of Alcohol in 1977, 1978, 1997, 1999, and 2006. Each of these arrests included additional charges such as driving without a license; driving in violation of license restrictions; driving without proper helmet/eye protection; driving with an alcohol concentration of 0.10 or more; transporting an open container; and attempting to elude. The Applicant's Federal Bureau of Investigation arrest record lists each of these arrests and the associated charges (Item 7). As a result of his 1997 arrest for Driving Under the Influence of Alcohol, Applicant spent three weeks in jail, and was also sentenced to one year of unsupervised probation. After his June 1999 conviction on the same charge, he was sentenced to two years of supervised probation, and required to attend eight hours of weekly counseling for four weeks (Item 8 at pp. 58-60). Applicant's June 2006 conviction was dismissed when he completed a court-ordered alcohol treatment program (Item 8 at p. 63).

Upon admission to the treatment program in September 2006, Applicant was evaluated as Alcohol Dependent by a Licensed Alcohol and Drug Abuse Counselor (LADAC). Applicant attended individual counseling as well as intensive outpatient group counseling. He participated in Alcoholics Anonymous (AA) and had negative results on the periodic urine and breath tests. The goal of Applicant's program was to be able to "live a sober life in the community." Applicant was discharged in August 2007 with a diagnosis of Alcohol Dependence in Early Partial Remission and a positive prognosis (Item 8 at p. 112).

Applicant admitted during his investigative interview in March 2008 that he drove when intoxicated because "his thinking and judgment were clouded by the alcohol." He admitted his alcohol problem. As of the date of the interview, he had abstained for the previous six months because he wanted to change his drinking behavior, safeguard his health, and avoid losing money paid in alcohol-related fines (Item 8 at p. 60). Subsequently, at some point between March and September 2008, when Applicant completed his response to DOHA Interrogatories, he resumed drinking alcohol. In his Interrogatory response, Applicant stated that he drinks "one to two beers, not more than once per week" and has not drunk alcohol to the point of intoxication for more than two years (Item 8).

Applicant's first engaged in criminal conduct in 1976 when he was charged with Possession of Stolen Property. Applicant pled guilty and was fined. In July 1980, he was charged with Evading Arrest (Item 7). The record does not contain information about the disposition of this charge. More recently, Applicant used cocaine seven times between January and May 2001 (Item 8 at pp. 51; 64). He was arrested in June 2001 and charged with Possession/Use of Narcotic Drug and with Possession/Use of Drug Paraphernalia (Item 7). The latter charge was dismissed after he received drug treatment starting in December 2001. He successfully concluded the program in November 2002 (Item 8 at p. 115). The record is silent as to details of this treatment. Applicant stated in his Interrogatory response that he has not used illegal drugs since April 2001 and has no intention to use them in the future (Item 8).

### **Policies**

Each security clearance decision must be a fair, impartial, and common-sense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).<sup>5</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the "whole person" concept.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under the guidelines related to financial considerations, alcohol consumption and criminal conduct.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>6</sup> for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an Applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the Government's case.

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<sup>5</sup> Directive 6.3

<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Because no one has a “right” to a security clearance, an Applicant bears a heavy burden of persuasion.<sup>7</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each Applicant possesses the judgment, reliability and trustworthiness to protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant’s suitability for access in favor of the Government.<sup>8</sup>

## Analysis

### Guideline F, Financial Considerations

The security concern pertaining to finances is that

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 over-extended 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 (AG ¶18).

The facts presented support application of AG ¶19(a) (*inability or unwillingness to satisfy debts*) and AG ¶19(c) (*a history of not meeting financial obligations*). Applicant owes \$5,300 in delinquent debts to ten creditors. He has allowed delinquencies to accrue for years, and many of Applicant's debts, which started becoming delinquent around 2002, still appear in his 2008 credit bureau reports. AG ¶19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*) also applies because Applicant did not file his federal tax returns for Tax Years 2002 and 2006.

The financial considerations guideline includes factors that can mitigate disqualifying conditions. The following mitigating conditions are relevant:

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<sup>7</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>8</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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;

AG ¶20(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;

AG ¶20(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;

AG ¶20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquencies are both numerous and recent. Although some became delinquent as far back as 2002, all remain unpaid. AG ¶20(a) does not apply. The file does not indicate that factors such as unemployment, divorce or other unforeseen events interfered with Applicant's ability to pay his debts. He could have taken steps to initiate payment plans in the years since his debts became delinquent, as he did in September 2008, after he received the DOHA Interrogatories.. Mitigating conditions AG ¶20(a) and (b) cannot be applied.

Applicant submitted evidence that he has contacted several creditors and started payment plans (allegations 1.b., 1.d., 1.g., 1.h., and 1.k.). Although he showed one payment toward each of three of these debts, he offered no proof of a track record of payments. He provided no documentation to show that the remaining alleged debts have been paid. Without such a track record, or documentation that Applicant either resolved his debts or made a good-faith effort to do so, neither AG 20 ¶(c) nor AG ¶20(d) can be applied. In addition, it is of particular concern that Applicant failed to fulfill his obligation to file returns and pay his federal income tax for two years. He offered no substantive reason for his failure, and his apparent lack of appreciation for this obligation raises concerns. I resolve Guideline F against Applicant.

### **Guideline G, Alcohol Consumption**

The security concern about alcohol consumption is that

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 ¶ 21).

Available information raises 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)* applies based on Applicant's five arrests for DUI between 1977 and 2006. His history of excessive alcohol use, as well as the poor judgment he displayed by driving after becoming intoxicated, implicate AG ¶ 22(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*). Finally, AG ¶ 22(f) applies (*relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program*). After Applicant was evaluated as alcohol dependent in 2006, he completed a treatment program and was discharged in 2007 with an evaluation of alcohol dependence in early partial remission. He later told the security investigator that he wanted to change his behavior, and knew that alcohol was costing him large sums of money and endangering his health. He abstained for six months. Nevertheless, he subsequently returned to drinking alcohol.

As to mitigation, 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*) does not apply. Applicant's alcohol-related problems are not in the distant past. His alcohol use cannot be considered infrequent or unusual behavior, given his extensive history. Despite this history, his alcohol treatment, and his acknowledgement of the negative effects on his life, Applicant's decision to return to the use of alcohol casts serious doubt on his current good judgment.

Some mitigation is available under AG ¶ 23(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]*). At his security interview in 2008, Applicant admitted that he has an alcohol problem. He has attended alcohol treatment, and he did abstain from alcohol for six months in 2007-2008. However, AG ¶ 23(b) requires that Applicant establish a pattern of abstinence. Applicant has not established such a pattern, as he had resumed drinking alcohol. The facts do not support application of AG ¶ 23(b). I find against Applicant on Guideline G.

### **Guideline J, Criminal Conduct**

The security concern under this guideline is that

Criminal conduct 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).



Disqualifying condition AG ¶ 31(a) (*a single serious crime or multiple lesser offenses*) applies. Since 1976, Applicant's criminal history includes charges of possession of stolen property, possession/use of an illegal drug, and five convictions for Driving Under the Influence of Alcohol. Deciding to drive after becoming intoxicated is a serious offense; each time he did so he not only displayed poor judgment, but also represented a threat to public safety and to himself. As a result of his repeated convictions, he has been fined, had his driving license suspended and restricted, been placed on probation, and been referred for alcohol treatment. AG ¶ 31(a) applies.

Guideline J includes two relevant mitigating conditions: 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 AG ¶ 32(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*).

Neither AG ¶ 32(a) nor AG ¶ 32(d) mitigate Applicant's conduct. Several of the offenses alleged against Applicant, which involve criminal conduct that occurred approximately 30 years ago (allegations 1.a., 1.b., 3.a. and 3.b.), are mitigated by the passage of time. However, application of AG ¶ 32(a) also requires that all the conduct not cast doubt on an Applicant's trustworthiness and good judgment. When this old conduct is viewed along with his more recent criminal conduct, a pattern emerges that demonstrates a willingness to disregard the law. This pattern does demonstrate a lack of reliability and trustworthiness. AG ¶ 32(a) cannot be applied.

AG ¶ 32(d) applies partially, because Applicant has demonstrated rehabilitation by avoiding illegal drugs since 2001. However, he admits that he has resumed drinking alcohol. His persistence in engaging in conduct that has resulted in repeated criminal convictions over a period of three decades undermines any claim to rehabilitation as to his alcohol-related criminal conduct, and AG ¶ 32(d) does not apply. I find against Applicant on Guideline J.

### **Whole Person Concept**

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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) 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.

Applicant has a history of criminal conduct that includes arrests and convictions that started in 1976, more than 30 years ago. He has engaged in criminal conduct as a mature adult, including using cocaine when he was 46 years old, and being convicted on a DUI charge when he was 51. Such conduct in middle age raises serious questions about his good judgment and reliability. Although Applicant recognizes the negative effects alcohol has had on his life, he continues to drink alcohol.

Applicant's last alcohol-related arrest and conviction occurred about three years ago. After his resulting alcohol treatment, he briefly abstained from alcohol. Despite the fact that Applicant was evaluated as alcohol dependent by a licensed alcohol and drug abuse counselor,<sup>9</sup> he returned to drinking alcohol and will continue to use it in the future. He cannot claim rehabilitation because he continues to engage in the conduct that led to most of his criminal conduct—drinking alcohol. In addition, Applicant has disregarded his financial obligations, and most importantly, failed to meet his obligation to file returns and pay federal income taxes. A fair and common-sense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts about his ability and willingness to protect the Government's interests. Accordingly, I conclude that it is not clearly consistent with the national interest to grant Applicant access to classified information.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST Applicant
Subparagraph 1.a	Dismissed by Government
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Omitted from SOR
Subparagraph 1.d. – 1.n.	Against Applicant

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<sup>9</sup> The counselor's credentials as an LADAC do not meet disqualifying condition AG ¶ 22(e) under Guideline G. However, the requirements for this credential are substantial, and I conclude that the evaluation is appropriate to consider within the whole person analysis.

Paragraph 2, Guideline G:	AGAINST Applicant
Subparagraph 2.a. – 2.h.	Against Applicant
Paragraph 3, Guideline J:	AGAINST Applicant
Subparagraph 3.a. – 3.d.	Against Applicant

**Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge