



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



In the matter of:)	
)	
)	ISCR Case No. 09-05387
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

July 7, 2010

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I deny Applicant's eligibility for access to classified information.

Applicant signed his Electronic Questionnaire for Investigations Processing (e-QIP) on March 24, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and G on December 11, 2009. 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 (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on January 11, 2010. He submitted a notarized, written response to the SOR allegations dated January 18, 2010, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on April 7, 2010. Applicant received the FORM on April 19, 2010. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response dated May 3, 2010. DOHA assigned this case to me on May 21, 2010. The Government submitted ten exhibits, which have been marked as Items 1-10 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 2, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant exhibit A (AE A).

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.e, 1.g, 1.h, 1.i, and 2.a-2.c of the SOR with explanations. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 1.f, and part of the facts in allegation 2.d of the SOR.¹ He also provided additional information to support his request for eligibility for a security clearance.² After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

A Department of Defense contractor hired Applicant, who is 52 years old, to work in process consulting in March 2009. In his response to the SOR, Applicant indicated that he is not currently working for his employer, but has an offer from this employer contingent upon the result of this case.³

Applicant is not married and does not have any children. He received an associate of arts degree in 1982. He continues to attend other college training courses.⁴

From 1997 until 2002, Applicant worked as a management consultant for a large company. From May 2002 until January 2006, he worked as a developer of buildings in a private limited liability corporation. This development project performed poorly and ended in early 2006. Since this time, Applicant has worked as a self-employed management consultant, and in temporary consulting jobs. He was unemployed

¹When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²Item 2; AE A.

³*Id.*

⁴Item 4.

between September 2006 and February 2007, and has been unemployed off and on since October 2007. He has been unable to work in his current position because the issues with his security concern are not resolved.⁵

When the real estate development business failed, Applicant not only lost \$800,000 in anticipated profits, he lost \$300,000 of his own money and incurred significant debt after he exhausted all his resources.⁶ He has not provided copies of his business records showing these losses. He indicated that he has paid several of his creditors since this loss, but he has not provided a copy of any documents, bills, or checks showing that these payments have been made. Applicant denied owing the debt in SOR allegation 1.f. The July 31, 2009 and the October 16, 2009 credit reports show a zero balance on both accounts he had with this creditor. I find that this debt is paid.⁷

Applicant admitted the debt in allegation 1.g. The most recent credit report reflected that he disputed this debt. Applicant has not explained why he disputed this debt. The remaining debts in the SOR are unpaid.⁸

Applicant began drinking socially at age 22. His first recorded DUI occurred in August 2001, when he drank about four drinks during a five-hour plane trip. When he arrived at his destination, he retrieved his car and luggage. On his way home, the police stopped him and conducted two breathalyzer tests. He passed the first test and failed the second test. The police arrested and charged Applicant with driving under the influence (DUI). He pled guilty to a reduced charge of reckless driving, paid the fines, and attended a driver's improvement course.⁹

In March 2003, the police stopped Applicant while he was driving home from a night club. The police arrested and charged him with DUI. He pled no contest to the charge, and the court sentenced him to 12 months probation, ordered him to complete a two-day DUI class, and fined him. The court also directed that he attend alcohol counseling, which he did for four weeks, completing the program. Appellant denies being diagnosed as alcohol dependent or as an alcohol abuser and the record contains no evidence showing such a diagnosis. He did not submit any records from the alcohol counseling program.¹⁰

⁵*Id.*; AE A.

⁶Part of his losses related to liens Applicant paid on client units after the builder defaulted. AE A.

⁷Item 2; Item 9; Item 10.

⁸Item 2; Item 10.

⁹Item 5.

¹⁰*Id.*

Applicant fears flying. He began drinking at an airport before he boarded a flight home in July 2006. After he arrived at his destination, he retrieved his luggage and car. He started to drive home, but realized he should not drive. He re-parked his car and called someone to pick him up. In the meantime, airport security called the police, who arrived before his ride. Although his car engine was turned off and his key in this hand, the police arrested and charged him with his third DUI as required under state law. The court found him guilty of DUI, fined him \$1,500, placed him on probation, ordered him to complete DUI classes totaling 24 hours, and revoked his driver's license for five years. After one year, he could apply for a business driver's license, but he has not because he cannot afford to pay the \$100 monthly fee to have the license.¹¹

Following his third DUI arrest, Applicant decided that he needed to stop drinking at airports and states he has. The record contains no evidence showing any alcohol-related incidents, such as public drunkenness, since 2006. Applicant drinks sporadically, mostly at social events, limiting himself to two or three beers. He plans to continue drinking in his present pattern.¹²

Applicant acknowledged his debts and arrests for DUI in his SF-86. He also discussed his debts and DUIs with the security investigator.¹³

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 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 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

¹¹*Id.*; AE A.

¹²*Id.*; Item 2; Item 7.

¹³Item 4; Item 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, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An 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 an 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.

Section 7 of Executive Order 10865 provides that 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 relating to the guideline 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated significant delinquent debt from a failed business venture. He has been unable to pay some obligations arising from this period. These disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), mitigation may occur when “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.” Applicant’s financial worries arose when his development business encountered severe difficulties and closed more than four years ago. His business failure is an unusual circumstance, which is not likely to reoccur as Applicant has not indicated any intent to become involved in such business ventures in the future. The failure of his business does not cast doubt on his current reliability, trustworthiness, or good judgment. This mitigating condition partially applies.

Under AG ¶ 20(b), security concerns may be mitigated where “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.” The failure of his development business and the financial losses he sustained as a result reflect that circumstances beyond his control created his current debts. He stated that he repaid several creditors from his business failure which would show he acted responsibly under the circumstances. However, he did not provide documents, such as business tax records, business records, and bank statements, to show his losses. Likewise, he has not provided documentary evidence of the debts he had been paying since the business ended. Thus, I am unable to assess if he acted responsibly under these circumstances. I find this mitigating condition has partial applicability.¹⁴

Evidence that “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” is potentially mitigating under AG ¶ 20(c). There is not evidence that Applicant received financial counseling or that his finances are under control. Similarly, AG ¶ 20(d) applies

¹⁴In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant failed to provide any documentary evidence that he contacted his creditors listed in the SOR or any of the creditors from his failed business. He has not shown through documentation that he paid creditors related to his business failure, nor has he provided documentation showing arrangements he may have with creditors to repay his debts. These mitigating conditions do not apply.¹⁵

Guideline G, Alcohol Consumption

Under 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.”

AG ¶ 22 describes conditions that could raise a security concern and the following conditions may be disqualifying 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;

(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;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant began consuming alcohol socially at age 22. He sporadically consumed alcohol over the years. He started to drink alcohol to relax while flying. This decision led to his first DWI arrest in 2001. In the next five years, the police arrested him twice for DUI. In 2004, he attended alcohol counseling for four weeks at the direction of the court. He concluded this program at the end of four weeks. He has never been diagnosed as an alcohol abuser or alcohol dependent. The Government has established a security concern under AG ¶¶ 22(a) and (b), but not under AG ¶¶ 22(c) and (d) as the record does not contain any evidence of a diagnosis of alcohol abuse or alcohol dependence by a professional.

¹⁵AG ¶¶ 20(e) and 20(f) are not applicable in this case.

AG ¶ 23 provides conditions that could mitigate security concerns and the following may be applicable in this case:

(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

(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.

Since the record lacks evidence which reflects that Applicant was diagnosed as an alcohol abuser or as alcohol dependent, AG ¶ 23(d) is not applicable in this case. Applicant provided credible information to the Government about his arrests for DUI. He did not attempt to down play or hide this information. Thus, I find his written statements about his usage of alcohol credible. Applicant drinks socially. He has a fear of flying and drank alcohol to relax. On two occasions, he drank too much alcohol to relax. This conduct resulted in two DUIs. In between these two DUIs, he drank too much at a pub and received a third DUI. With his last DUI, he realized he needed to change his behavior and attitude towards alcohol and flying, and he did. The record does not contain any evidence that he has been drinking and driving, arrested for any other alcohol offenses, or disciplined by an employer for coming to work intoxicated. It has been four years since his last DUI. He is not required to abstain from alcohol consumption to hold a security clearance, only to use in moderation, which he does. He has mitigate the Government's security concerns under Guideline G.

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is not sufficient. In reaching this conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems occurred during a specific time period and are the result of a business failure. He stated that he paid some of his creditors, and has a plan to resolve more debts when he starts working. Applicant did not provide documentary evidence showing he incurred these debts as a result of the business failure. In addition, he did not provide documentary evidence of payments on these debts since 2006. Without this proof, an assessment of his overall efforts to resolve debt problems cannot be made. He has not mitigated the Government's security concerns under Guideline F.

Applicant consumes alcohol socially. He does drink alcohol on an irregular basis. He did use alcohol to excess when flying because he fears flying. This decision resulted in two DUI arrests, the last one in 2006. The other DUI arrest occurred six years ago. After his last DUI arrest in 2006, he decided to rethink his decision to drink and fly, then drive. He realized he made a bad decision and changed his behavior. While he is not currently driving, the record lacks any evidence of alcohol abuse, alcohol dependency, binge drinking, or other alcohol related incidents. Applicant can consume alcohol in moderation and hold a security clearance.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alcohol consumption under Guideline G, but he has not mitigated the Government's security concerns about his finances under Guideline F.

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
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.i:	Against Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a-2.d:	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.

MARY E. HENRY
Administrative Judge