



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



In the matter of:)	
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)	ISCR Case No. 09-06837
Applicant for Security Clearance)	

Appearances

For Government: Fahryn E. Hoffman, Esq., Department Counsel
For Applicant: Jim Darnell, Esq.

July 25, 2011

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for a security clearance to work in the defense industry. The evidence shows he has a history of alcohol-related incidents; a history of criminal conduct largely but not entirely related to alcohol; and a history of financial problems or difficulties (about \$50,000 in delinquent debts). He has abstained from alcohol since late November 2010, attends Alcoholics Anonymous (AA), and has a favorable prognosis from his therapist; he is currently serving two years of supervised probation due to a November 2009 conviction for driving while intoxicated (DWI); and his efforts to resolve his financial problems are at the initial stages. The current short-term trend is favorable, but given the recency, nature, extent, and seriousness of these matters, it is too soon to tell if these matters are safely in the past or a harbinger of things to come. He did not present sufficient evidence of a long-term record of reform and rehabilitation to mitigate the security concerns. Accordingly, as explained below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on August 3, 2010, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find that it was clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual basis for the action under the security guidelines known as Guideline G for alcohol consumption, Guideline J for criminal conduct, and Guideline F for financial considerations.

Applicant answered the SOR and requested a hearing. The case was assigned to another administrative judge on October 22, 2010. The hearing scheduled for December 9, 2010, was continued at the request of Applicant's recently retained counsel. The case was then reassigned to me February 9, 2011. The hearing took place March 31, 2011. The transcript (Tr.) was received April 8, 2011.

The record was kept open for two weeks, until April 15, 2011, to allow additional documentary evidence in support of Applicant's case. It was extended two more weeks, until April 29, 2011. Applicant, through counsel, timely submitted several documents, which are marked and admitted, without objections, as Exhibits N–S.

Findings of Fact

Applicant is a 36-year-old employee of a federal contractor. He has not married and has no children. His educational background includes a bachelor's degree in information technology (IT). He has worked in the IT field since at least 2000. He has been employed as a quality assurance technician from April 2009 to present. He has a good employment record in his current job and in the past.²

Applicant's employment history during the last decade includes two periods of unemployment. He worked as a member of the technical staff for a large, publicly traded telecommunications company from April 2000 to February 2008, when he was laid off due to a reduction in force. He was earning between \$73,000 and \$80,000 annually when laid off. He was then unemployed until about August 2008, when he accepted a short-term position as a telecommunications technician. That job lasted 30 to 60 days until about September 2008, when he resumed unemployment until April 2009. He received about \$1,700 monthly as unemployment compensation during these two

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines contained in Enclosure 2 to the Directive.

² Exhibits F and B; testimony of former coworker at Tr. 76–89.

periods. He relocated to his state of current residence in late 2008, and he began his current job in April 2009. His starting salary was less than he previously earned, about \$55,000 annually, and he is now earning about \$65,000 annually.³

Applicant has a lengthy history of alcohol-related incidents away from work.⁴ This history also includes criminal conduct that was largely but not entirely related to his use of alcohol. The various events are noted below:

1. Arrested and charged with domestic-violence offenses in February 2001; charges dismissed in 2003 upon completing domestic-violence classes. Alcohol was not involved.
2. Arrested and charged with driving while ability impaired by alcohol in May 2001; pleaded guilty and sentenced to probation.
3. Arrested and charged with obstructing or interfering with police in April 2004; pleaded guilty and sentenced to one day of jail, a fine, and costs. Alcohol was involved.
4. Arrested and charged with speeding and driving under the influence (DUI) in October 2005. Convicted in June 2006 and sentenced to five days of jail, 24 months of probation, 48 hours of community service, and ordered to attend an alcohol education and assessment program. Subsequently, he was discharged from the program for noncompliance with attendance requirements.
5. Arrested and charged with fugitive other jurisdiction–failure to appear on July 3, 2006, fugitive other jurisdiction–failure to appear on August 21, 2006, and a traffic offense. The first two charges related to the June 2006 DUI conviction and sentence.
6. Arrested and charged with DWI in August 2007. Convicted in November 2009 and sentenced to 180 days in jail (suspended), a fine, and court costs, and two years of probation. He remains on supervised probation through November 2011.
7. Charged with probation violation in January 2009, when he appeared in court in an attempt to transfer probation from the June 2006 DUI conviction to his state of current residence. Then unemployed and living in another jurisdiction, the case was resolved with a sentence of 30 days in jail, of which he served about 21.

Applicant's addiction therapist (a licensed clinical social worker with a Ph.D.) and probation officer both testified on his behalf and they vouched for his current good behavior. The therapist assessed Applicant's current status as stable ("he's doing

³ Tr. 115.

⁴ Exhibits 2, 4, 8–13.

fine”),⁵ and that Applicant needs to continue or persist on the same path, which includes regular attendance at AA.⁶ The diagnosis was a “toss-up” between alcohol dependence and alcohol abuse, and the therapist assessed Applicant’s prognosis as “excellent.”⁷ The therapist is of the opinion that Applicant is now sufficiently motivated to abstain from alcohol.⁸ This is consistent with Applicant’s testimony, as he now recognizes his problematic history of alcohol use, he intends to continue seeing the therapist, he intends to continue attending AA and working the 12-step program, and he intends to continue abstaining from all alcohol use, as he is seeing positive benefits in his life.⁹

Likewise, Applicant’s probation officer explained that Applicant has complied with all terms and conditions of probation, to include successfully completing a state DWI education program, attending a MADD victim-impact panel, completing 42 hours of community service.¹⁰ The probation officer described Applicant’s attitude as “responsive and responsible” and characterized him as an “excellent probationer.”¹¹ Based on his contact with Applicant, the probation officer does not foresee any problems with the balance of Applicant’s term of probation.

Concerning the financial matters, the SOR alleged 15 delinquent debts (collection accounts and charged-off accounts) ranging in amounts from \$202 to \$17,353 for a total of about \$53,269. Department Counsel conceded that two debts are duplicates, and so favorable findings will be made on SOR ¶¶ 1.c and 1.d, which duplicate the debts at SOR ¶¶ 1.i and 1.h, respectively. In his Answer, Applicant admitted responsibility for all the debts alleged. Based on his testimony and the documentary exhibits, 3 of the 15 debts are paid or settled for a total of about \$981; 2 debts are duplicates; 4 debts are in the initial stages of a repayment agreement; and 6 debts are unresolved. The current status of each debt is described in the following table.

<i>Debt</i>	<i>Current Status</i>
SOR ¶ 1.a—\$2,405 charged-off account.	Unresolved. In collection with law firm. Owed \$2,513 as of Oct. 1, 2008; paid \$550 on Apr. 4, 2011. (Exhibit R; Tr. 117–119)

⁵ Tr. 31.

⁶ Exhibits A and B.

⁷ Tr. 46–47.

⁸ Tr. 47–49.

⁹ Tr. 104–108.

¹⁰ Exhibits C, D, and E.

¹¹ Tr. 60–61.

SOR ¶ 1.b—\$1,187 collection account.	Unresolved. Made contact with current creditor on Mar. 31, 2011. (Exhibit M; Tr. 119–120)
SOR ¶ 1.c—\$1,729 collection account.	Duplicate.
SOR ¶ 1.d—\$2,394 collection account.	Duplicate.
SOR ¶ 1.e—\$443 charged-off account.	Unresolved. Same creditor as ¶ 1.a, included in that balance.
SOR ¶ 1.f—\$17,353 charged-off account.	In repayment agreement as of Mar. 31, 2011, requiring monthly payments of \$483 beginning Apr. 18, 2011. (Exhibit Q; Tr. 121–122)
SOR ¶ 1.g—\$736 charged-off account.	Settled for \$552 as of Aug. 2010. (Exhibit G)
SOR ¶ 1.h—\$3,071 collection account.	In repayment agreement with initial \$62.59 payment made on Mar. 31, 2011. (Exhibit L; Tr. 123–125)
SOR ¶ 1.i—\$1,448 collection account.	Unresolved. (Tr. 126–127)
SOR ¶ 1.j—\$202 collection account.	Paid. (Exhibits H, L, and S; Tr. 127–128)
SOR ¶¶ 1.k—\$375 charged-off account.	Settled for \$227 through another creditor. (Exhibit 4 at 12; Tr. 128–129)
SOR ¶ 1.l—\$446 collection account.	Unresolved. (Tr. 129–131)
SOR ¶ 1.m—\$5,172 charged-off account.	In repayment agreement with initial \$40 payment due Apr. 18, 2011. (Exhibits J and K; Tr. 131–132)
SOR ¶ 1.n—\$13,462 charged-off account.	Unresolved. (Tr. 132–133)
SOR ¶ 1.o—\$2,846 collection account.	In repayment agreement as of Mar. 31, 2011. (Tr. 133–134)

Applicant attributed his indebtedness to unemployment as well as the consequences of his past decisions. For example, his November 2009 DWI conviction resulted in about \$13,000 in associated expenses, and he is currently paying about \$2,000 yearly as a special fee or surcharge for his driver’s license, which is scheduled to end with his probation in November 2011. He believes he has sufficient income to pay his regular monthly expenses and repay his delinquent debts, and he described his efforts to do so as a “work in progress.”¹²

¹² Tr. 139–141, 145.

Law and Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. The only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information. The Department of Defense takes the handling and safeguarding of classified information seriously because it affects our national security, the lives of our servicemembers, and our operations abroad.

It is well-established law that no one has a right to a security clearance.¹³ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁴ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁵ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁶

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁷ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁰ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²¹

¹³ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹⁴ 484 U.S. at 531.

¹⁵ Directive, ¶ 3.2.

¹⁶ Directive, ¶ 3.2.

¹⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁸ Directive, Enclosure 3, ¶ E3.1.14.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ Directive, Enclosure 3, ¶ E3.1.15.

²¹ *Egan*, 484 U.S. at 531.

The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²²

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant facts and circumstances, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.²³ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Analysis

1. Alcohol Consumption and Criminal Conduct

The security concerns under these two guidelines are discussed together because, based on the record, they are largely factually interrelated, and both guidelines focus on an individual's reliability and trustworthiness as core concerns. Under Guideline G for alcohol consumption,²⁴ the suitability of an applicant may be questioned or put into doubt due to a history of excessive alcohol consumption. Under Guideline J for criminal conduct,²⁵ the suitability of an applicant may be questioned or put into doubt due to a history of criminal activity.

Here, the evidence is more than sufficient to establish security concerns based on Applicant's well-established and lengthy history of alcohol-related incidents away from work and criminal activity that was largely related to his alcohol use. The several incidents noted in the findings of fact that took place during 2001–2009 establish a pattern of behavior. He compounded problems for himself when he failed to attend the court-ordered alcohol education and assessment program based on the June 2006 DUI conviction. As a result, he served jail time in January 2009. He is currently under a suspended sentence of 180 days in jail and on supervised probation for his November 2009 DWI conviction. His probation is scheduled to terminate later this year.

Based on the evidence as a whole, the following disqualifying conditions under Guideline G are raised:

²² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²³ Executive Order 10865, § 7.

²⁴ AG ¶¶ 21, 22, and 23 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁵ AG ¶¶ 30, 31, and 32 (setting forth the security concern and the disqualifying and mitigating conditions).

AG ¶ 22(a) alcohol-related incidents away from work, such as driving while under the influence of alcohol . . . ;

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;

AG ¶ 22(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and

AG ¶ 22(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

And under Guideline J, the following disqualifying conditions are raised:

AG ¶ 31(a) a single serious crime or multiple lesser offenses;

AG ¶ 31(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

AG ¶ 31(d) individual is currently on parole or probation; and

AG ¶ 31(e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

There are several mitigating conditions to consider under each guideline. The following mitigating condition under Guideline G is most pertinent:

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).

And under Guideline J, the following mitigating condition is most pertinent:

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.

After considering the relevant disqualifying and mitigating conditions, the central issue is whether Applicant presented sufficient evidence of reform and rehabilitation to mitigate and overcome the obvious security concerns under both guidelines. I conclude that he has not. His problematic use of alcohol and related criminal activity are of recent

vintage. He is now doing the right things, such as abstaining from alcohol, attending AA, and he has a favorable prognosis from his therapist. But these are all new developments, as shown by his four to five months of abstinence at the time of hearing. Likewise, his criminal activity is a current factor as shown by his suspended sentence of 180 days in jail with 24 months of supervised probation. Although not a *per se* bar to a favorable decision, Applicant's current probationary status is a significant fact that cannot be disregarded in weighing his evidence of reform and rehabilitation.

2. Financial Considerations

Under Guideline F for financial considerations,²⁶ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.²⁷ The overall concern under Guideline F is:

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.²⁸

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information within the defense industry.

The evidence here supports a conclusion that Applicant has a history of financial problems or difficulties. Indeed, he accumulated about \$50,000 in delinquent debts over a period of years. This raises security concerns because it indicates inability or unwillingness to satisfy debts²⁹ and a history of not meeting financial obligations³⁰ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions.

There are six mitigating conditions to consider under Guideline F. Any of the following may mitigate security concerns:

²⁶ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁷ See ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted).

²⁸ AG ¶ 18.

²⁹ AG ¶ 19(a).

³⁰ AG ¶ 19(c).

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;

AG ¶ 20(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; or

AG ¶ 20(f) the affluence resulted from a legal source of income.

The most pertinent here are AG ¶ 20(b)—conditions beyond his control, and AG ¶ 20(d)—making a good-faith effort, and both apply.

Applicant's problematic financial history appears to be due to unemployment, general financial mismanagement or inattention, and expenses incurred due to his legal troubles. He is now facing a small mountain of delinquent debt along with normal expenses. To his credit, he is trying to repay them as opposed to seeking relief in bankruptcy court. So far, he has paid or settled less than \$1,000 for three debts and just recently entered into repayment agreements for four debts. Six debts remain unresolved. It appears he is now on the right track, but what is missing here is a long-term record of repayment of delinquent debts coupled with general financial stability and responsibility. At this point, it is too soon to tell if will resolve his delinquent debts in the foreseeable future. He has not made sufficient progress to fully mitigate the security concerns stemming from his problematic financial history.

3. *Whole-Person Concept*

Looking at the case as a whole, the evidence justifies current doubts about Applicant's judgment, reliability, and trustworthiness. He engaged in drinking to excess that resulted in multiple alcohol-related incidents. He has had multiple arrests, charges, and convictions, and he is currently on probation. And his financial house is in disrepair. The current short-term trend is favorable, but given the recency, nature, extent, and

seriousness of these matters, it is too soon to tell if these matters are safely in the past or a harbinger of things to come. He did not present sufficient evidence of a long-term record of reform and rehabilitation to mitigate the security concerns.

Following *Egan* and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept³¹ and Applicant's favorable evidence. Nevertheless, Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline G:	Against Applicant
Subparagraphs 1.a–1.e:	Against Applicant
Paragraph 2, Guideline J:	Against Applicant
Subparagraphs 2.a–2.e:	Against Applicant
Paragraph 3, Guideline F:	Against Applicant
Subparagraphs 3.a–3.b:	Against Applicant
Subparagraphs 3.c–3.d:	For Applicant
Subparagraphs 3.e–3.o:	Against Applicant

Conclusion

In light of the record as a whole, 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.

Michael H. Leonard
Administrative Judge

³¹ AG ¶ 2(a)(1)–(9).