



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-09281
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

November 30, 2011

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant committed multiple alcohol-related driving offenses between 1994 and 2004, and admitted during a June 2010 interview that he drank to the point of intoxication about once a month. The only delinquent debt listed in the Statement of Reasons (SOR) that is being satisfied is through a garnishment of his wages. Applicant knowingly falsified the security clearance application he submitted in May 2010. Clearance is denied.

On June 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR alleges security concerns under Guideline G (alcohol consumption), Guideline E (personal conduct), and Guideline F (financial considerations). Applicant submitted a response to the SOR, dated August 22, 2011, in which he admitted all SOR allegations, except those contained in subparagraphs 2.d, 2.e, 3.b, 3.c, 3.e, 3.g, 3.i, 3.j, and 3.l. He requested a hearing.

---

<sup>1</sup> This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

The case was assigned to me on September 28, 2011. A notice of hearing was issued on October 12, 2011, scheduling the hearing for October 24, 2011.<sup>2</sup> The hearing was conducted as scheduled. The Government submitted five documents that were marked as Government Exhibits (GE) 1-5 and admitted into the record without objection. Applicant testified and submitted two documents that were marked as Applicant's Exhibits (AE) 1 and 2, and admitted into the record without objection. The transcript was received on November 8, 2011.

### **Findings of Fact**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 46-year-old man who was employed as an aircraft painter by a defense contractor from September 2011 until October 12, 2011.<sup>3</sup> Applicant had been working at the same job, but for a different employer, from February 2010 until September 2011. He worked for a third employer as an aircraft painter from September 2009 until February 2010; and for a fourth employer as an aircraft painter from February 1998 until May 2007. With the exception of some part-time employment, Applicant was unemployed from May 2007 until September 2009. Applicant submitted character reference letters from his security manager and his senior manager attesting to his reputation for being a dedicated, dependable, valued, and conscientious employee.

Applicant graduated high school in June 1984. He served on active duty in the Navy from 1987 until 1997, from which he received an honorable discharge having attained the rank of petty officer third class. Applicant was first married in 1990. He does not remember when that marriage ended by divorce. He has two children, ages 21 and 17, from that marriage. Applicant remarried in January 2006. That marriage ended in divorce in April 2007.

Applicant was convicted of driving under the influence of alcohol (DUI) in 1994, 1995, and 2004. He was serving on active duty in the Navy when he was convicted the first two times, and he was required to complete the Navy's Level I and Level II alcohol education programs. He was required to complete a Level II DUI course and attend Alcoholic's Anonymous (AA) meetings following his 2004 conviction. Applicant's driving privileges were suspended for five years following his 2004 conviction, and, as a condition of having those privileges reinstated, he was required to have an alcohol detection device (an Interlock) installed in his vehicle from March 2009 until March 2011. There is no evidence that Applicant has operated a vehicle while under the influence of alcohol since his 2004 conviction.

---

<sup>2</sup> Applicant waived the 15-day notice requirement on the record (Tr. 14-16).

<sup>3</sup> Notification (included in the file) was received after the hearing was conducted that Applicant had been separated from this employment on October 12, 2011. However, Department Counsel contacted the employer's facility security officer after the hearing and was informed Applicant is potentially subject to rehire if he is granted a security clearance.

In addition to his DUI convictions, Applicant was charged with driving with a suspended license in 2000 and again in 2006. The first charge was dismissed. He was convicted of the second offense and a fine was imposed.

Applicant was questioned about his 2004 DUI arrest and his drinking habits on June 21, 2010. He provided details about his 2004 DUI arrest, but initially denied any other alcohol-related incidents. Applicant provided details about his 1995 DUI arrest only after being confronted by the investigator with information about that arrest. During this interview, Applicant claimed he only drank two to three bottles of beer a week at his residence or while fishing with friends. However, he also stated he became intoxicated about once a month and it took about six bottles of beer for him to become intoxicated.

Applicant was reinterviewed on August 4, 2010. For the first time, he provided information about his 1994 DUI conviction. During this interview, Applicant claimed he drank one or two beers two or three times a week, and that he became intoxicated about once a year. He also stated that he has attempted to either completely stop or at least reduce the amount he drank about three or four times since his last DUI conviction.

Applicant testified, unconvincingly, at the hearing that he had not consumed any alcohol since March 2011. He testified the people in the apartment building where he had been living drank quite a bit, and he drank along with them. He claims that he has now moved to a different apartment building and no longer needs to drink to socialize with his neighbors.

SOR subparagraphs 3.a, 3.b, and 3.g list judgments obtained by the same collection agency in different amounts. Applicant testified he believes those are duplicate entries for a single debt. However, his credit report, dated June 11, 2010, lists different court case numbers for each of those judgments. Additionally, the amounts alleged for each judgment, \$4,290, \$1,068, and \$2,940 respectively, are dissimilar, further indicating these are three distinct debts. Applicant testified his salary was being garnished to satisfy the debt(s) owed to this creditor.

SOR subparagraphs 3.c, 3.e, 3.i, and 3.j list medical debts, owed in the combined amount of \$2,007. Applicant testified he had health insurance when the first three debts were incurred and he does not understand why his insurer did not pay these debts. However, his credit report, dated June 11, 2010, lists three different dates when these accounts were opened, and two of those dates were while Applicant was unemployed. Applicant testified he does not recognize the creditor listed in subparagraph 3.j. Applicant has not made any payment on any of these debts.

Applicant was questioned about the medical debts discussed above on June 21, 2010. At that time, he stated the debt listed in subparagraph 3.c arose while he was employed and had insurance. He further stated he sought payment from his company's insurance provider and was told it would not pay the expenses because they were not work-related. He claimed he did not recognize or recall the debts listed in subparagraphs 3.e and 3.j. He attributed the debt alleged in subparagraph 3.i to uninsured ambulance service he received, but stated he had never received a bill for the service or been informed that it had been submitted for collection.

SOR subparagraphs 3.d, 3.f, 3.h, 3.k, 3.l, and 3.m allege collection accounts, owed in the combined amount of \$1,732. Applicant testified he made some payments on the debt alleged in subparagraph 1.k, but none since about 2008. He did not submit any proof of any payment having been made. He testified he still has service with the cable company listed in subparagraph 3.l, and he does not understand why he owes the company anything. He admits he has not made any payments on any of the other debts.

Applicant attributes his delinquent accounts to the extended period of unemployment he experienced between May 2007 and September 2009. However, a number of the debts, including the three listed judgments, became delinquent while he was employed in 2006 or earlier. He testified his hourly wage since he regained full-time employment in September 2009 ranged from \$18.90 to \$23.04. When asked why he had not even satisfied the small delinquent debts alleged in the SOR, Applicant's response was: "There's no reason." (Tr. 73)

Applicant failed to list the judgments that had been entered against him, that he had debts that had been turned over to a collection agency, that he had been over 180 days delinquent on any debt, or that he was then currently over 90 days delinquent on debts, as required, in the security clearance application he submitted on May 20, 2010. Applicant testified he didn't list the judgments because he didn't understand that a judgment was considered a financial matter (Tr. 51). He initially testified he didn't know why he didn't list the other debts (Tr. 51), but then went on to elaborate that he didn't understand some of the questions and may have overlooked other questions (Tr. 52).

## **Policies**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial decision based upon the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶¶ 6.3.1 through ¶¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline G (alcohol consumption), Guideline E (personal conduct), and Guideline F (financial considerations), with their disqualifying and mitigating conditions, are most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>4</sup> The Government has the burden of proving controverted facts.<sup>5</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>6</sup>

---

<sup>4</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>5</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>6</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

although the Government is required to present substantial evidence to meet its burden of proof.<sup>7</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>8</sup> Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>9</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>10</sup>

No one has a right to a security clearance<sup>11</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>12</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>13</sup>

---

## Analysis

### Guideline G, Alcohol Consumption

Paragraph 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. (Adjudicative Guideline [AG] 21)

Applicant had three DUI convictions between 1994 and 2004. The first two convictions occurred while he was on active duty in the Navy. His driving privileges were suspended for five years following his last conviction, and he had to have an Interlock device placed in his vehicle from March 2009 until March 2011 to regain his driving privileges. Disqualifying Condition (DC) 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.*

Applicant was required to attend Level I and Level II alcohol programs while he was in the Navy as a result of his first two convictions. He was required to attend a Level II DUI program and participate in AA meetings following his 2004 DUI conviction. When questioned in June 2010, Applicant admitted he drank to the point of intoxication about once a month. When he was questioned again in August 2010, he claimed he only drank to the point of intoxication about once a year. At the hearing, Applicant testified he had quit

---

<sup>7</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>8</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>9</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>10</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>11</sup> *Egan*, 484 U.S. at 528, 531.

<sup>12</sup> *Id.* at 531.

<sup>13</sup> *Egan*, Executive Order 10865, and the Directive.

drinking entirely in March 2011. However, as he originally admitted in his June 2010 statement, Applicant testified he had unsuccessfully attempted to quit drinking several times since his 2004 DUI conviction. Having observed Applicant's appearance and demeanor while he testified, I did not find his assertion that he quit drinking completely in March 2011 credible.

Considering Applicant's three alcohol-related offenses occurred over the period of about ten years, the last offense occurred about nine years after the previous offense, Applicant's admission that he drank to the point of intoxication monthly when he was questioned in June 2010, the fact that Applicant only recently had the Interlock device removed from his automobile, and his unbelievable testimony that he quit drinking completely in March 2011, I conclude Mitigating Conditions (MC) 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*; and MC 23(b): *the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome the problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)* do not apply. The remaining mitigating conditions have no applicability to the facts of this case.

#### **Guideline E, Personal Conduct**

Conduct involving questionable judgment, lack of candor, dishonesty, or willingness 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 15)

Applicant was convicted of DUI on three occasions. He was charged with driving on a suspended license in 2000, and again in 2006. The two suspended license charges are directly related to Applicant's DUI convictions. These offenses are all adequately adjudicated under the alcohol consumption guideline and no separate personal conduct determination is warranted as to those SOR allegations.

However, Applicant failed to list the judgments that had been entered against him, that he had debts that had been turned over to a collection agency, that he had been over 180 days delinquent on any debt, or that he was then currently over 90 days delinquent on debts, as required, in the security clearance application he submitted on May 20, 2010. [Although not alleged in the SOR, Applicant also failed to list his 1994 and 1995 DUI arrests, an automobile repossession, and his attendance at AA meetings and a DUI program following his 2004 DUI conviction in that security clearance application. Further, while he listed his 2004 DUI arrest in the security clearance application, instead of disclosing that he had been convicted of the offense, Applicant wrote "Driving under influence - cleared of charges."] Accordingly, with so many omissions and false statements contained in the security clearance application, I find Applicant's testimony that he didn't list the judgments because he didn't understand that a judgment was considered a financial matter, that he didn't know why he didn't list the other debts, and that he didn't understand some of the questions and may have overlooked other questions not credible.

DC 16(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* applies. I have considered all mitigating conditions and conclude that none apply.

## **Guideline F, Financial Considerations**

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. . . . (AG 18)

Applicant has three judgments that have been entered against him and numerous delinquent accounts that have been submitted for collection. The only debt(s) on which payments were recently being made, assuming Applicant's testimony on this matter is believable, are those that are being satisfied through a garnishment. DC 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant testified he had made some payments on one of the debts, although none since 2008. However, he did not submit any proof in support of that testimony. He testified three of the four medical debts should have been paid by health insurance. However, two of those debts were incurred while he was unemployed, and, according to his June 2010 statement, he was informed by the insurance company that it would not cover the third debt. He claims, without any verification, that he was unaware of the fourth medical debt. Applicant admits he has not made any payment on the remaining debts.

Applicant attributes his delinquent debts to the extended period of unemployment he experienced. However, a number of the debts became delinquent before he became unemployed. Further, he regained full-time employment in September 2009, but failed to make any effort to repay any of his delinquent debts. Accordingly, no mitigating condition applies.

Considering all relevant and material facts and circumstances present in this case, the whole-person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant failed to mitigate the alcohol consumption, personal conduct, and financial considerations security concerns. He has not overcome the case against him, nor has he satisfied his ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance. Guideline G, Guideline E, and Guideline F are decided against Applicant.

## **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 G:	AGAINST APPLICANT
Subparagraphs 1.a-d:	Against Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-c:	For Applicant
Subparagraphs 2.d and 2.e:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-m:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Henry Lazzaro  
Administrative Judge



