



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



In the matter of: )  
)  
) ISCR Case No. 10-09557  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

03/29/2012

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. I conclude that Applicant provided sufficient information to rebut or mitigate the Government's security concerns under the financial considerations, criminal conduct, and alcohol consumption adjudicative guidelines.

**Statement of the Case**

On June 10, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his position with a defense contractor. After reviewing the results of an ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant two interrogatories to clarify or augment potentially disqualifying information. After reviewing the results of the background investigations and Applicant's responses to the Interrogatories, DOHA could not make the preliminary affirmative findings required to issue a security clearance. On September 1, 2011, DOHA issued to Applicant a Statement of Reasons (SOR) detailing security concerns for financial

considerations under Guideline F, alcohol consumption under Guideline G, and criminal conduct under Guideline J. 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) effective in the Department of Defense on September 1, 2006.

Applicant answered the SOR on September 21, 2011. He denied two of the financial considerations allegations claiming one was a duplicate of another allegation, and the other had been settled and paid. He admitted the other three financial considerations allegations. He admitted all alcohol consumption allegations. He inadvertently did not address the criminal conduct allegation. However, since the criminal conduct arose directly from the alcohol consumption allegations which Applicant admitted, Applicant admitted this allegation at the hearing. Applicant did not request a hearing, but Department Counsel requested a hearing on October 11, 2011. Department Counsel was prepared to proceed on December 9, 2011. The case was assigned to me on February 2, 2012. DOHA issued a Notice of Hearing on February 6, 2012, for a hearing on February 28, 2012. I convened the hearing as scheduled. The Government offered eight exhibits, which I marked and admitted into the record without objections as Government Exhibits (Gov. Ex.) 1 through 8. Applicant and one witness testified on his behalf. Applicant offered three exhibits which I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through C. I left the record open for Applicant to submit additional documents. Applicant timely submitted an additional document which I marked and admitted into the record as App. Ex. D. Department Counsel had no objection to consideration of the document (Gov. Ex. 9, e-mail, dated March 2, 2012) DOHA received the transcript of the hearing (Tr.) on March, 15, 2012.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted the allegations under criminal conduct, alcohol consumption, and most of the allegations of financial consideration. His admissions are included in my findings of fact.

Applicant is 30 years old and has been an aircraft mechanic for a defense contractor for approximately two year. He is a high school graduate who served over seven years on active duty in the United States Marine Corps from January 2001 until August 2008. He was a corporal (E-4) when he left active duty with a general discharge under honorable conditions. He is married with one child. He has never held a security clearance. (Tr. 22-23; Gov. Ex. 1, e-QIP, dated June 10, 2010)

Credit reports (Gov. Ex. 5, dated February 24, 2012; Gov. Ex. 6, dated August 24, 2011; and Gov. Ex. 7, dated June 24, 2010), and a response to Interrogatories (Gov. Ex. 8, dated May 31, 2011) list the following delinquent debts for Applicant: a

charged-off store account for \$2,580 (SOR 1.a); a credit account in collection for \$2,479 (SOR 1.b); a collection account for \$122 (SOR 1.c); a charged-off credit union account for \$4,798 (SOR 1.d); and another charged-off account with the same credit union for \$5,370 (SOR 1.e).

When Applicant left active duty in August 2008, he was unemployed for approximately two months until he moved without his family to his original state of residence and was employed as a deckhand on a river barge for approximately one year from October 2008 until December 2009. He moved back to the area of his last active duty station to reside with his wife and child in December 2009. He was unemployed from December 2009 until May 2010 when he found employment with the defense contractor. During the period of unemployment, he was unable to pay his bills and they were either charged off or went to collections. Since gaining employment in May 2010, he has been paying his delinquent debts.

The debts listed at SOR 1.a and SOR 1.b are the same debt. Applicant settled and paid this debt. (Tr. 16-18; App. Ex. A, Letter, dated February 21, 2012) Applicant stated he paid the debt at SOR 1.c on June 9, 2010. He called the collection agency to obtain an account statement but the collection agency has not provided a statement of account balance. (Tr. 20-11; App. Ex. D, e-Mail, dated February 29, 2012). Applicant settled and paid the debt at SOR 1.d. (Tr. 18-19; App. Ex. B, Letter, dated September 6, 2011). Applicant is making \$110 monthly payments on the debt at SOR 1.e. (Tr. 19-20; App. Ex. C, Account Statement, dated December 27, 2011; App. Ex. D, Account Statement, dated February 29, 2012)

Applicant damaged a military barracks in July 2005. He admits to drinking alcohol prior to the incident and being intoxicated. He received nonjudicial punishment of 30 days restriction and extra duty. He was required to attend alcohol counseling, and the diagnosis was alcohol abuse. However, this did not affect his consumption of alcohol. He did not believe he had an alcohol problem since he was 20 years old at the time, and was frustrated because of an argument he had on the telephone with his wife. He did not consider his consumption of alcohol as an issue, so he did not stop consuming alcohol. (Tr. 23-27)

Applicant was charged with driving while intoxicated in November 2007 with a blood alcohol content of .20. He was drinking alcohol on base with some friends before driving home. He was apprehended for failing to fully stop at a stop sign and determined to be under the influence of alcohol. The civilian authority did not process the case but reduced the charge to reckless driving and suspended his driver's license. His commander imposed nonjudicial punishment for the offense. He was ordered to attend alcohol counseling and treatment. He was diagnosed this time as alcohol dependent. He was not aware of the alcohol dependent diagnosis and did not change his consumption of alcohol. (Tr. 27-29)

Seven months later, Applicant was charged with driving while intoxicated in May 2008. Applicant and his wife had separated and he went out drinking with a Marine

Corps friend. He was found guilty in a civilian court, fined \$997, his license was suspended, and he was ordered to complete alcohol counseling and treatment. He also received nonjudicial punishment from his commander. He was reduced in grade and was discharged with a general discharge under honorable conditions based on the series of alcohol-related offenses. He was again diagnosed as alcohol dependent in May 2008. However, he continued to drink alcohol in moderation until December 2009. (Tr. 29-30)

Applicant admits he is alcohol dependent. He has not driven a car after drinking since May 2008. His license was suspended from May 2008 until June 2010. In December 2009, Applicant and his wife reconciled and he made a pledge to his wife and young daughter that he would no longer consume alcohol. He has not consumed alcohol since that time and he does not intend to again consume alcohol. He does not attend any counseling or after care programs since he found that such programs do not work for him. He finds that his pledge to his wife and the realization what his consumption of alcohol and a diagnosis of alcohol dependent does cost him in life and work are sufficient motivation for him not to consume alcohol. His life now centers on his family and family activities. He no longer goes to bars to drink. In the last two years, he has encountered stressful situations and has not turned to alcohol to manage the stress. He does not view alcohol as an out or a means of managing stress. He wants to strive to be successful and knows he cannot do so if he drinks alcohol. (Tr. 30-39).

Applicant's supervisor, a retired Marine Corps officer, testified that he hired Applicant in May 2010. He found Applicant to be highly qualified as an aircraft mechanic. Since he was hired, Applicant has received other qualifications for his position and has been promoted to a higher level mechanic. His performance of duty has been tremendous. He is hardworking and dependable. He is trustworthy and reliable and there are no indications of any financial or alcohol-related problems. (Tr. 39-42)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 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, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The 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 the Applicant may deliberately or inadvertently fail to protect or protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

### **Analysis**

#### **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) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant’s delinquent debts established by credit reports and Applicant’s admissions raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial

obligations). The evidence indicates an inability and not an unwillingness to satisfy debt. Applicant incurred financial problems from unemployment and a move to be with his family.

I considered Financial Considerations Mitigating Conditions 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) and AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions apply. Applicant left active duty and was unemployed for two months. He moved back to the area where he was raised and found some work. He stayed at the location for approximately a year until returning to where his family was located. After that, he was unemployed for approximately six months and unable to pay his debts. He subsequently found employment and started to pay and resolve his delinquent debts. One of his five debts was a duplicate of another and he paid the debt. He established that he settled and paid two other debts. He is making steady monthly payments on his one remaining debt and it will be resolved soon. He is current with his present bills, and has filed and paid all required taxes. Applicant acted reasonably and responsibly towards his finances under the circumstances.

I considered AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. An applicant is not required to establish that he paid each and every debt listed. All that is required is that Applicant must demonstrate an established plan to resolve his financial problems and show he has taken significant actions to implement that plan.

Applicant is resolving his delinquent debts. He contacted his creditors, settled and paid three debts, and is paying his one remaining debt. The payment of his debts is significant and credible information to show a desire to resolve debt. His settlement and payment of debts establish a meaningful track record of debt payment. His effort to resolve his delinquent debts shows a reasonable and prudent adherence to financial obligations and establishes a good-faith effort to resolve and pay debts. His past delinquent debts do not reflect adversely on his trustworthiness, honesty, and good judgment.

## **Alcohol Consumption, Guideline G**

The alcohol consumption and criminal conduct security concerns against Applicant are from the same incidents. The gravamen of Applicant's conduct was the excessive consumption of alcohol, which led to criminal charges and punishment. 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)

Applicant admits that he damaged a barracks after consuming alcohol and received nonjudicial punishment from his commander. He admits to two driving while intoxicated offenses and being charged with a criminal offense based on excessive alcohol consumption on both occasions by civil authorities and by his military commander. He also admits to initially being diagnosed with alcohol abuse and then as alcohol dependent. This evidence raises Alcohol Consumption 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 with alcohol abuse or alcohol dependent) and 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). Applicant's diagnosis of alcohol abuse and alcohol dependence and his relapse to drinking alcohol raises 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 (f) (relapse after diagnosis of alcohol abuse and dependence and completion of an alcohol rehabilitation program)..

The Government produced substantial evidence to establish the disqualifying conditions in AG ¶¶ 22(a), (c), (e) and (f). The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under alcohol consumption. An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden to prove or disprove it never shifts to the Government.

As noted above, the gravamen of Applicant's conduct causing the security concerns is the excessive consumption of alcohol. In this regard, Applicant raised Alcohol Consumption Mitigating Conditions 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); and AG ¶ 23(b) (the individual acknowledges his or her alcoholism or issue 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). These mitigating conditions apply. The first alcohol-related incident happened over seven years ago and the last alcohol-related and criminal conduct incident was over four years ago. The unusual circumstance leading to excessive alcohol consumption for two of the incidents was personal marital issues with his wife. On the first incident, Applicant had an argument with his wife while

he was serving overseas and she was home in the United States. On the second offense, Applicant drove after drinking alcohol with friends and was stopped for a traffic offense. On the third incident, Applicant and his wife had separated and he was living with a friend. These issues are not likely to recur since Applicant and his wife have reconciled and are living together and he no longer consumes alcohol. He understands the impact his alcohol consumption had on his wife, his family, and his work. Applicant acknowledges that he was diagnosed with alcohol dependence. He established that he has not consumed alcohol since December 2009 and has taken steps to overcome his alcohol-related problems. He does not participate in counseling or after care programs because he does not believe those type programs will help him overcome his alcohol-related problems. His abstinence from alcohol is based on his need to maintain a good life style for his wife and family. He has not consumed alcohol in over two years and he has no desire to do so. He understands his alcohol-related problems and knows how he must continue alcohol abstinence. He established that he has been successful in his rehabilitation efforts. In addition to the passage of time and the reconciliation with his wife, he has been gainfully employed and has a reputation at work for trustworthiness, reliability, and good judgment. Applicant has mitigated security concerns of alcohol consumption.

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

The security concerns for alcohol consumption and criminal conduct are the same. The concerns involve questions of Applicant's reliability, judgment, and trustworthiness. Criminal activity 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 regulation. (AG ¶ 30)

Applicant admits that he damaged a barracks after consuming alcohol and received nonjudicial punishment from his commander. He admits to two driving while intoxicated offenses and being charged with a criminal offense based on excessive alcohol consumption on both occasions by civil authorities and by his military commander. This conduct raises Criminal Conduct Disqualifying Condition AG ¶ 31(a) (a single serious crime or multiple lesser offenses). The criminal conduct mitigating conditions involve issues similar to those discussed under alcohol consumption. The issues involve the passage of time, the unusual nature of the action causing security concerns, the likelihood of recurrence, and whether the actions cast doubt on the individual's reliability, trustworthiness, and judgment. The Criminal Conduct mitigating conditions that apply are 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, higher education good employment record, or constructive community involvement). For the same reasons stated above under alcohol consumption, Applicant has mitigated the security concern for criminal conduct.



## **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered the testimony of his supervisor and his reputation for honest, reliability, and trustworthiness. I considered his reputation as an excellent employee and his record of accomplishments. Applicant drank to excess while young and on active duty. He understands the diagnosis of alcohol dependence and that he cannot consume alcohol. He has refrained from alcohol consumption for over two years. He established he had changed life circumstances and successful rehabilitation. His actions to overcome his alcohol dependence were careful, responsible, and showed the exercise of good judgment, and an ability to control impulses. His ability to overcome alcohol dependence, and establish impulse control shows his reliability and indicates he will properly safeguard classified information. The record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the financial considerations, alcohol consumption, and criminal conduct security concerns.

## **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:	FOR APPLICANT
Subparagraphs 1.a – 1.e:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT

Subparagraphs 2.a – 2 h:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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THOMAS M. CREAN  
Administrative Judge