



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



In the matter of:)
)
) ISCR Case No. 11-05981
)
Applicant for Security Clearance)

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*

06/29/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated alcohol consumption and financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 9, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G (alcohol consumption) and F (financial considerations). The action was taken under Executive Order (EO) 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 by the Department of Defense on September 1, 2006.

Applicant answered the SOR on May 2, 2012, and requested a hearing before an administrative judge. The case was assigned to me on May 29, 2012. DOHA issued a notice of hearing on June 4, 2012, scheduling the hearing for June 20, 2012. The

hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on June 27, 2012.

Procedural and Evidentiary Rulings

Notice

Applicant affirmatively waived his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing.

Evidence

Government Exhibits (GE) 1 through 9 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through M, which were admitted without objection.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. He has worked for his current employer since 2008. He seeks to retain his security clearance, which he has held since 1998. He has a bachelor's degree and a master's degree. He has never married, and he has no children.¹

Applicant has three alcohol-related arrests and convictions in three states. In December 2007, he was arrested and charged with driving while intoxicated (DWI), first offense, blood alcohol concentration (BAC) .08-.14%. Applicant was drinking at a club and decided to drive an intoxicated friend home. After dropping the friend off, he realized that he should not have been driving. He drove to a parking lot, parked the car, and fell asleep. A police officer found him behind the wheel with the motor running. He pleaded guilty to DWI. He was ordered to attend alcohol counseling, which he completed in May 2009.²

Applicant was arrested in September 2008 and charged with driving under the influence of alcohol (DUI). He was also cited for having an open container of alcohol in the car. He pleaded guilty to reckless driving and open container, and the DUI charge was dismissed. He was sentenced to a \$1,000 fine. Applicant denies having anything to drink before he was arrested. He had recently had an operation in his mouth, and he was on pain medication. He stated that a friend was drinking in the car and left a cup of alcohol in the cup holder. Applicant was alone when he was stopped. Applicant refused a breathalyzer. He stated that he did not submit to the breathalyzer because he was in pain from the surgery and it would have been difficult to blow into the machine.³

¹ Tr. at 63, 82; GE 1, 3.

² Tr. at 24-26, 46-47; Applicant's response to SOR; GE 1, 3 5; AE L.

³ Tr. at 26-29, 47-49, 67; Applicant's response to SOR; GE 1, 3, 5; AE M.

Applicant was arrested in February 2009 and charged with DWI. He pleaded guilty to DWI in May 2009. Applicant admits that he had been drinking before he was arrested, but he denies driving. He testified that he was visiting the state where he was arrested. A friend rented a car and they both were drinking, but the friend was driving when two tires blew out. The friend went to get help, leaving Applicant with the car. Applicant stated that he was waiting outside the car when the police arrived and eventually arrested him for DWI. He stated that he had to travel to the state for court hearings and his case was continued several times. He stated that he could not afford to continue to travel for the hearings, and he followed his attorney's advice and pleaded guilty.⁴

Applicant's testimony about his third arrest is contradicted by other evidence. Applicant was interviewed for his background investigation in November 2010. A signed statement was not taken, but the interview was summarized in a report of investigation (ROI). The investigator reported that Applicant stated the following about his third arrest:

In 02/2009 he was driving home alone at approximately 3:00 AM from a nightclub, name and full address not recalled, when he had a flat tire, location address not known. A [City and State of arrest] police patrol unit, officer name not recalled, stopped and observed he had been drinking. He was not driving at the time, but admits he had he had been drinking alcohol, mixed drinks earlier, amount not recalled. He was given a physical field sobriety test by the officer by the road. He passed the test, but refused an alcohol breath test, which resulted in his arrest for DUI. He was transported to the [City, State] city jail. After approximately 10 hours he was transferred to the [City] county jail, address not known. He was held for 6 days and released on a \$3,500 bond, date not recalled. His court date was in 03/2009 at the [City] county court. He pled guilty and received time served, 1 year driving suspension in the state of [State], and a \$400 fine. He does not believe he was intoxicated, but admits he was close to the legal limit in [State]. At the time he was living out of state and wanted to get the offense behind him.⁵

DOHA sent Applicant the ROI and asked him if the ROI accurately reflected the information that he provided to the investigator on the day he was interviewed. He indicated that it did not, and he submitted corrections about the third arrest as follows:

My court case started in March 2009 and occurred every 3 weeks on a Wednesday. My lawyer could not represent me alone, so I had to travel back to [City] and appear in court personally. Prosecutor continued my case several times while waiting on the arresting officer to produce a video of the arrest night. To my know[ledge] I shared with my lawyer that there were no video tape that evening. After traveling back and forth to [City] several times in the middle of the week and missing work, I decided

⁴ Tr. at 29-33, 49-53; GE 1, 3, 5.

⁵ GE 3.

against my lawyer to take the plea and fine listed in the documentation. My lawyer, mention[ed] that if I lived in [State] to just keep fighting the case, because they had no proper reason to arrest me on DUI charges since the car was at rest and not being driven and the key was not in the ignition.⁶

Applicant reported that, subject to his additions and deletions, the ROI accurately reflected the interview, and he agreed that the “interrogatories, along with the attached report of [his] interview, may be admitted into evidence at a hearing to determine [his] suitability to hold a security clearance.” Applicant never mentioned another driver.⁷

Applicant completed an intensive 14-hour weekend alcohol counseling program in May 2009, as a requirement of his 2007 DWI conviction. He still drinks alcohol, but he stated that he only drinks responsibly.⁸

Applicant stated that his finances were stable before his company moved him to a high-cost area without an increase in salary in 2003. The costs associated with his three alcohol-related arrests also placed a significant strain on his finances.⁹

The SOR alleges four delinquent debts with balances totaling about \$700 and a \$28,402 deficiency owed on a car loan after the car was repossessed. Applicant denied all the financial allegations. He also provided reasons for his denials. Individual debts are discussed further below.

Applicant established that in July 2011, he paid \$273 to resolve the \$206 debt alleged in SOR ¶ 2.a.¹⁰

Applicant denied SOR ¶ 2.b, which alleged the \$28,402 car loan deficiency to a collection company on behalf of a bank, because “[p]er [his] Experian Credit Report (page 5), [his] balance is reported as \$0 and will be removed from [his] credit report by May 2015.” He admitted that he borrowed more than \$30,000 from the bank on a car that was later repossessed. Credit reports show the loan was opened in May 2005, with a date of last payment of November 2008, a high balance of \$37,223, and monthly payments of \$787. Applicant stated that he attempted to negotiate a settlement with the bank, but the bank was unwilling to settle for anything other than the full amount owed. Applicant questions the legitimacy of the \$28,402 amount because he paid several years of car loan payments. The bank charged off the loan and transferred the balance to a collection company. He stated that he made some efforts to negotiate a settlement with the collection company, but the collection company wanted full payment. Most

⁶ GE 3.

⁷ GE 3.

⁸ Tr. at 54-58; AE L.

⁹ Tr. at 33-34; Applicant’s response to SOR; GE 2, 3.

¹⁰ Tr. at 35, 44-45, 59; Applicant’s response to SOR; AE B.

recent credit reports list the balance of the debt as \$0 and indicate that the debt was included in or discharged through bankruptcy. There is no other evidence that Applicant ever filed bankruptcy.¹¹

SOR ¶¶ 2.c and 2.d. allege \$100 debts to a collection company on behalf of the city where Applicant used to live. Applicant denied knowledge of either debt. The debts are reported by Experian on the 2010 combined credit report. They are not reported by the other two credit reporting agencies. TransUnion reported that the debts had been deleted. Applicant submitted a combined credit report that was obtained in April 2012. Experian continued to report the two debts. Applicant has never contacted the collection company or the city listing the delinquent debts to question the origin of the debts.¹²

Applicant disputes owing Applicant the \$306 debt alleged in SOR ¶ 2.e. He denies knowledge of the collection company and the underlying creditor. The debt is reported by Experian on the combined credit report that was obtained in October 2010. It is also listed on the Experian credit report of March 2011. It is not reported on other credit reports, including the April 2012 combined credit report.¹³

Applicant paid other debts that were not alleged on the SOR. He has never received financial counseling, but he has a budget and he indicated that his finances are in better shape. He is able to pay his current bills, and he is not incurring new delinquent debts.¹⁴

Applicant submitted a number of documents and letters attesting to his character and his excellent job performance.¹⁵

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 to be 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, administrative judges apply the guidelines 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

¹¹ Tr. at 37-44, 58-61; Applicant's response to SOR; GE 3, 6-9; AE C-E.

¹² Tr. at 35-37, 61-62; Applicant's response to SOR; GE 6-9; AE C-E.

¹³ Tr. at 62-63; Applicant's response to SOR; GE 6-9; AE C-E.

¹⁴ Tr. at 64-65, 78; Applicant's response to SOR; GE 3, 4, 6-9; AE C-J.

¹⁵ AE A, K.

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.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 G, Alcohol Consumption

The security concern for alcohol consumption is set out in 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.

The guideline notes conditions that could raise security concerns under AG ¶ 22. The following is potentially applicable 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.

Applicant has multiple alcohol-related arrests. The evidence establishes AG ¶ 22(a) as a disqualifying condition.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

(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;

(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

(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.

Applicant has three alcohol-related arrests. He states that he was sleeping in the car when a police officer found him behind the wheel with the motor running. He admitted that he had been drinking before he pulled over to rest. He denied having anything to drink before his second arrest, but he was also cited for having an open container of alcohol in the car. He stated that a friend was drinking and left a cup of alcohol in the cup holder. He admitted that he was drinking before the third arrest, but he denies driving the car. Applicant was not credible, and his testimony is contradicted by his statement to the background investigator.

Applicant completed outpatient alcohol counseling, but there is no favorable prognosis. AG ¶ 23(d) is not applicable. Because of Applicant's failure to accept full responsibility for his alcohol-related arrests, I am unable to find AG ¶ 23(b) applicable. I find that Applicant's alcohol issues are recent and did not happen under unusual circumstances. I am unable to determine that they are unlikely to recur. Applicant's alcohol consumption continues to cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 23(a) is not applicable.

Guideline F, Financial Considerations

The security concern 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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;
- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Applicant's company moved him in 2003 to a high-cost area without an increase in salary. However, most of Applicant's financial problems relate to the expenses associated with his three alcohol-related arrests. Applicant paid several debts that were not alleged in the SOR, and he paid \$273 to resolve the \$206 debt alleged in SOR ¶ 1.a. His finances are recovering from the problems created by his arrests, but he has done nothing of significance to address the \$28,402 car loan deficiency or the \$200 owed to the city where he used to live.

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His finances are not yet under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are not applicable.

AG ¶ 20(e) is applicable to the debt alleged in SOR ¶ 1.e. It is not applicable to any other debt.

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 the 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's favorable character evidence and work record. However, I do not believe he has been truthful about his alcohol-related arrests, and he has unresolved financial problems.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated alcohol consumption and financial considerations 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 G:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.d:	Against Applicant
Subparagraph 2.e:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge