



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 11-09893
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

04/18/2013

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and G (Alcohol Consumption). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on April 28, 2011. On December 5, 2012, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines F and G. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on December 11, 2012; answered it on December 27, 2012; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 31, 2013, and the case was assigned to me on

February 6, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 7, 2013, scheduling the hearing for February 28, 2013. On February 12, 2013, Applicant telephonically requested that his hearing date be changed to accommodate his personal schedule, and he agreed to moving his hearing to February 27, 2013. On February 13, 2013, DOHA issued an amended notice of hearing, rescheduling the hearing for February 27, 2013. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until March 15, 2013, to enable Applicant to submit additional documentary evidence. He timely submitted AX G through J. DOHA received the transcript (Tr.) on March 8, 2013.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations in the SOR except SOR ¶ 1.h, which he denied. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 54-year-old employee of a defense contractor. He has worked for his current employer since March 2011. He served in the U.S. Navy from March 1988 to March 2008, and he retired as a machinist's mate first class. (GX 4 at 117.¹)

In April 2007, while Applicant was still on active duty, he was charged with driving while intoxicated, after he passed out and hit a parked car. He was convicted and sentenced to 90 days in jail (85 days suspended) and a fine. He was placed on probation for three years. His driver's license was restricted for one year, and he was required to attend alcohol safety action program (ASAP) classes and to install an interlock device on his car. The court permitted him to complete the ASAP classes aboard his ship. (GX 4 at 110; GX 7.) He was not disciplined by Navy authorities. He paid the ASAP fees and completed all the program requirements. (AX I.)

Applicant was unemployed from the date of his retirement in March 2008 until August 2008. He worked for a defense contractor from August 2008 to October 2009, when he was laid off after he stepped into a hole alongside a roadway and broke his leg. He testified that he "had a few drinks" at a racetrack before he broke his leg. (Tr. 42.) He returned to work in January 2010.

In March 2011, Applicant was fired after several instances of failing to come to work after excessive drinking, without notifying his employer that he would be absent. He was hired by his current employer shortly thereafter. (GX 4 at 107-08.) He testified that he disclosed his firing and the reasons for it to his current employer. His current supervisor told him that they would not tolerate such conduct, and he has not had any alcohol-related incidents at work since he was hired. (Tr. 71.)

¹ The pagination of GX 4 begins with page 104.

In a personal subject interview (PSI) in May 2011, Applicant told a security investigator he drinks to intoxication about once a month, while at a racetrack or camping. He also consumes five to six beers at a sitting about twice a month. He told the investigator that it takes eight or nine beers for him to be intoxicated. He defined "intoxication" as slurred speech and inability to drive. He told the investigator that he intends to continue drinking on weekends. He does not drive after drinking. (GX 4 at 111.) He testified at the hearing that he does not believe that he has an alcohol problem. (Tr. 31.)

During the same PSI, Applicant also was questioned about the debts alleged in the SOR. He told the investigator that he did not know anything about the debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, and 1.g. He told the investigator that he believed the debts alleged in SOR ¶¶ 1.e and 1.i had been paid in full. He stated that his plan was to pay off his delinquent bills one at a time. (GX 4 at 111-12.) He reiterated his plan when he responded to DOHA interrogatories in September 2012. (GX 4 at 118-26.)

Around July 2012, Applicant broke his ankle while playing golf. He was unable to work for about 15 weeks. He was not paid by his employer during this period, but he collected unemployment compensation of \$325 per week, which was about \$300 less than he had been earning. (Tr. 43-44.) He testified that he had not been drinking when this injury occurred. (Tr. 58.)

Applicant married in May 1992, but he has been separated from his spouse since July 2005, due to her infidelity. (GX 4 at 109.) They have two sons, ages 18 and 20. Applicant and his wife have an informal support agreement, under which he pays child and spousal support of \$350 per month by allotment from his credit union account. (GX 4 at 133; AX J.)

The evidence concerning the delinquent debts alleged in the SOR is summarized below.

SOR ¶ 1.a (judgment for \$1,437). This judgment for a delinquent credit card account was entered against Applicant in December 2010. It is unresolved. (Tr. 47-48.)

SOR ¶ 1.b (charged-off account for \$7,593). This debt is for windows that Applicant installed in his house around 2006. He testified he made payments on this debt until around 2009, when he could no longer afford to make them, due to his injury and unemployment. His testimony is contradicted by his credit report, which reflects that the debt was charged off in October 2008, two months after he began his first job after retirement. (GX 2 at 1.) He testified that he tried to negotiate a payment agreement in 2009, but the contractor wanted payment in full. (Tr. 49-50.) He has made no further attempts to resolve the debt.

SOR ¶¶ 1.c and 1.d (collection accounts for \$467 and \$398). These debts were referred for collection in May 2008. (GX 2 at 2.) Applicant was questioned about them during a personal subject interview (PSI) in May 2011. (GX 4 at 112.) He

contacted the collection agency in January 2013, and the debts were settled in February 2013. (AX A; AX B; Tr. 52.)

SOR ¶¶ 1.e and 1.g (collection accounts for \$675 and \$662). These two collection accounts, opened in June 2008, were for the same debt. They were settled in February 2013. (GX 3 at 6; AX C; Tr. 53-54.)

SOR ¶ 1.f (judgment for \$1,125). This default judgment for a delinquent credit card account was entered against Applicant in March 2010. (GX 5.) Applicant learned about it during his May 2011 PSI, but he had not contacted the creditor as of the date of the hearing. (Tr. 55.)

SOR ¶ 1.h (medical debt for \$967). Applicant denied this debt in his answer to the SOR, contending that it had been paid by TRICARE. In his PSI, he told the investigator that he thought TRICARE had agreed to pay the debt. (GX 4 at 112.) In response to DOHA interrogatories, he stated that the debt had been paid by TRICARE. (GX 4 at 125.) Applicant submitted a DD Form 2527, Statement of Personal Injury – Possible Third Party Liability, to the TRICARE Management Activity in February 2013, and he testified that he had been informed by a TRICARE representative that the debt would be resolved. (AX D; Tr. 54-58.) However, it is not yet resolved. (GX 2 at 2.)

SOR ¶ 1.i (collection account for jewelry store for \$259). This debt was referred for collection in November 2008. (GX 3 at 9.) Applicant testified that he learned about this debt during his PSI. He settled the account in February 2013. (AX E.)

SOR ¶ 1.j (charged-off credit card account for about \$4,000). This account was charged off in May 2008. (GX 2 at 2.) Applicant has been making \$156 payments on this debt by an allotment from his retired pay since September 2010. (AX G; Tr. 59-60.)

Applicant testified that he did not contact all his creditors when he fell behind on his payments, because he was busy trying to catch up on his mortgage payments and pay his utility bills. His mortgage payments are now current. (Tr. 45, 48.)

In response to DOHA interrogatories in September 2012, Applicant submitted a personal financial statement (PFS) reflecting monthly net income of \$4,011, expenses of \$2,671, debt payments of \$1,043, and a net remainder of about \$296. (GX 4 at 133.) At the hearing, he testified that his net monthly income has increased to about \$4,200 and his expenses have decreased by about \$500, because his car loan and a dental bill have been paid off. (Tr. 62-64; AX H.)

Applicant testified that he does not have a plan in place to resolve the judgments alleged in SOR ¶¶ 1.a and 1.f or the charged-off debt in SOR ¶ 1.b. He testified that he intends to contact these three creditors and try to set up a payment plan. (Tr. 65-66.) He has not sought financial counseling, because he believes he can resolve his financial problems without assistance. (Tr. 66.)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition,

and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The evidence indicates that the collection accounts alleged in SOR ¶¶ 1.e and 1.g were for the same debt. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I will resolve SOR ¶ 1.e in Applicant's favor, and this debt will not be discussed further in the analysis below.

Applicant's admissions during his PSI, his answer to the SOR, and at the hearing are corroborated by his credit reports, and they are sufficient to establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The following mitigating conditions are potentially relevant:

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; and

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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, several are not resolved, and they did not occur under circumstances making them unlikely to recur.

The first prong of AG ¶ 20(b) is established, because Applicant encountered several conditions beyond his control: unemployment from March to August 2008, unemployment from October 2009 to January 2010, and reduction in income after his injury in July 2012. However, his loss of employment in March 2011 was due to his own misconduct, and it did not result in a significant period of unemployment.

The second prong of AG ¶ 20(b) (responsible conduct) is not fully established. It is established for the debt alleged in SOR ¶ 1.j, because he began repaying it in September 2010, well before he submitted his security clearance application. It is not established for the debt alleged in SOR ¶ 1.b, because Applicant did not contact the creditor until October 2009, even though he began working in August 2008. It is not established for the debts alleged in SOR ¶¶ 1.c, 1.d, 1.g, and 1.i, because he did not settle these debts until February 2013, when his hearing was imminent and he realized that his security clearance and his job were at risk. It is not established for the debts alleged in SOR ¶¶ 1.a and 1.f, because he has not contacted his creditors or made any effort to resolve these debts, even though he was questioned about them during his PSI in May 2011.

SOR ¶ 20(c) is not established. Applicant has not sought or received financial counseling, and his financial situation is not yet under control.

SOR ¶ 20(d) is established for the debt alleged in SOR ¶ 1.j, but not for the remaining debts alleged in the SOR. “Good faith” within the meaning of this mitigating condition means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicant settled the debts alleged in SOR ¶¶ 1.c, 1.d, 1.g, and 1.i, but he did so only a few days before the hearing, strongly suggesting that he was not motivated by a sense of obligation to his creditors but by concern for keeping his security clearance and his job.

SOR ¶ 20(e) is established for the medical debt alleged in SOR ¶ 1.h, because Applicant has documented his belief that this debt should have been paid by TRICARE. However, this mitigating condition is not established for the remaining debts alleged in the SOR.

Guideline G, Alcohol Consumption

The concern under this guideline 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 following disqualifying conditions under this guideline are potentially relevant:

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 as an alcohol abuser or alcohol dependent;

AG ¶ 22(b): alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

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

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 or dependence and completion of an alcohol rehabilitation program.

AG ¶ 22(a) is established by Applicant's DWI conviction in April 2007. AG ¶ 22(b) is established by Applicant's repeated unauthorized absences from work due to excessive drinking that caused him to be fired in March 2011. AG ¶ 22(c) is established by Applicant's admissions that he drinks to the point of intoxication about once a month and consumes five to six beers at a sitting about twice a month. AG ¶¶ 22(d), (e), and (f) are not established, because there is no evidence that Applicant has been diagnosed as an alcohol abuser or alcohol dependent.

The following mitigating conditions are potentially relevant:

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;

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

AG ¶ 23(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.

The first prong of AG ¶ 23(a) ("so much time has passed") focuses on whether the conduct was recent. There are no "bright line" rules for determining when conduct is "recent." The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

Applicant's DWI conviction was six years ago, and his alcohol-related loss of his job was two years ago. Each intervening period is a "significant period of time." However, Applicant continues to drink to the point of intoxication. The facts that he confines his drinking to weekends and does not drive after drinking do not mitigate the

underlying concern under this guideline, *i.e.*, that excessive drinking “often leads to the exercise of questionable judgment or the failure to control impulses.” His excessive alcohol consumption is not infrequent, and it does not occur under unusual circumstances making it unlikely to recur. Accordingly, I conclude that AG ¶ 23(a) is not established.

AG ¶ 23(b) is not established. Applicant has not acknowledged that he is dependent on alcohol or abuses it. To the contrary, he testified that he does not believe he has a problem with alcohol consumption.

AG ¶ 23(d) is not established. Applicant successfully completed an ASAP program while in the Navy, but he has not established a pattern of responsive alcohol consumption, and he has not received a favorable diagnosis from a medical professional or licensed clinical social worker.

Whole-Person Concept

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. In applying the whole-person concept, an 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. 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.

I have incorporated my comments under Guidelines F and G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant served honorably in the U.S. Navy for 20 years. He held a security clearance while in the Navy and retained it while working for a defense contractor. He was sincere and candid at the hearing. However, his continued heavy drinking and refusal to acknowledge that he has an alcohol problem leave me with doubts about his reliability, trustworthiness, and good judgment.

Applicant has made progress with his delinquent debts. To his credit, he is current on his house payments, recently paid off a car loan, and is current on his child

support and spousal support payments. He recently paid or settled several of his smaller debts. However, a security clearance adjudication is not a debt-collection procedure. It is aimed at evaluating an individual's judgment, reliability, and trustworthiness. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) The adjudicative guidelines do not require that an individual resolve every debt alleged in the SOR, make payments on all delinquent debts simultaneously, or pay the debts alleged in the SOR first. However, an applicant is expected to have a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

To his credit, Applicant has a plan to pay off his debts one by one, starting with the smaller debts, and he has executed that plan to resolve the debts alleged in SOR ¶¶ 1.c, 1.d, 1.g, and 1.i. However, the fact that he did not address these debts until his hearing was imminent, two years after he was questioned about them in his PSI, leaves questions about his reliability, trustworthiness, and good judgment.

After weighing the disqualifying and mitigating conditions under Guidelines F and G, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial problems and alcohol consumption. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant

Paragraph 2, Guideline G (Alcohol Consumption): **AGAINST APPLICANT**

Subparagraphs 2.a-2.b:	Against Applicant
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Conclusion

I conclude that 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.

LeRoy F. Foreman
Administrative Judge