



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



In the matter of:)
)
) ISCR Case No. 11-13047
)
Applicant for Security Clearance)

Appearances

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

06/06/2013

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns under Guideline G (Alcohol Consumption), but failed to mitigate those concerns under Guideline F, (Financial Considerations). Clearance is denied.

Statement of the Case

On April 11, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and G. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD could not find under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On July 21, 2012, Applicant answered the SOR and elected to have his case

decided on the written record in lieu of a hearing. On January 4, 2013, Department Counsel compiled the Government's File of Relevant Material (FORM) that contained documents identified as Items 1 through 11.

On January 4, 2013, the Defense Office of Hearings and Appeals (DOHA) forwarded to Applicant a copy of the FORM with instructions to submit any additional information and objections within 30 days of its receipt. Applicant received the FORM on March 14, 2013, and did not submit any objections or additional matters within the allotted time. The case was assigned to me on May 24, 2013. Items 1 through 11 are entered into the record.

Findings of Fact

Applicant is a 33-year-old computer network engineer who works for a defense contractor. He has been working for his current employer since March 2009. When he responded to the SOR, he was working at a location in the Middle East. He served on active duty in the U.S. Air Force from December 2002 to July 2006, rose to the grade of senior airmen (E-4), and received an honorable discharge. He earned an associate's degree in October 2006 and attended college for an additional year. He has never been married and has no children. In the past, he has held a security clearance without incident.¹

Under Guideline F, the SOR alleged that Applicant had 12 delinquent debts totaling \$33,191 (SOR ¶¶ 1.a – 1.i). Under Guideline G, it alleged that he was charged with driving under the influence (DUI) in September 2007 and January 2008 (SOR ¶¶ 1.a and 1.b); that he entered into a plea bargain for both counts of DUI, pleaded guilty to two counts of reckless driving in June 2008, and was sentenced to community service and a fine (SOR ¶ 2.c); and that he was later sentenced to 20 days in jail for failing to complete the community service (SOR 2.d). In his Answer to the SOR, Applicant admitted six of the delinquent debts (SOR ¶¶ 1.a, 1.b, 1.d, 1.f, 1.g, and 1.i) and each of the Guideline G allegations. His admissions are incorporated as findings of fact.²

In his Electronic Questionnaire for Investigations Processing (e-QIP) dated December 10, 2009, Applicant disclosed his two DUI charges and indicated both were reduced to reckless driving offenses. He also disclosed his probation violation in March 2009 for failing to complete the community service sentence. In responding to interrogatories in September 2011, he stated:

I consume alcoholic beverages on average once a month in a social sitting (sic) with friends. Do (sic) to previous incidents I only consume alcohol if I am at home or have not driven to the location of consumption or plan to

¹ Items 4 and 5.

² Items 1 and 4.

stay the night if the location is a friend's home. I usually consume beer or wine depending on the setting and what is available. No favorite brand of beer but I prefer dark brews and have a preference for red wines. On average I do not consume more than 2 drinks.

The last time I was intoxicated was July 2011 when on vacation in Las Vegas with a large group of friends. I had about 8 drinks over a 5 hour period. There is no specific type of drink that I require to get intoxicated, it comes down to how much I have consumed and the alcoholic content of the drink.³

No evidence was presented to show that Applicant was ever diagnosed as an alcohol abuser or as being alcohol dependent or that he received any alcohol treatment. In his Answer to the SOR, Applicant stated:

The [allegations under Guideline G] represent actions in my life that I strive to avoid ever reoccurring. Since then I have avoided alcohol consumption in any situation where I do not have a verified ride home. If I'm expecting to consume alcohol, I will not transport myself to the site of consumption. I make sure to advocate against drinking and driving among my peer group and only socialize with individuals that advocate the same.⁴

In his e-QIP, Applicant attributed his financial problems to getting behind on bills because of the DUI court proceedings. In his Answer to the SOR, he also stated:

I realize that I have shown poor financial and debt management in the past. In the last year I have taken tremendous steps to rectify that situation. All my bills are documented on a calendar that I review daily. Upon payday I proceed to pay any debts that will be due in the following two weeks. I strive to not only pay each bill in full but early if possible. I do not maintain a balance on my credit cards for more than 30 days. I have allocated a set amount from each paycheck to go into savings to mitigate any potential unforeseen financial issues or personal crisis. As a result of these steps that I have taken over the last year, my credit rating and report has experienced a vast improvement and I have managed to set aside a sizable amount of money in savings. I have started aggressively contacting creditors that I have an outstanding balance with and negotiating payment plans or settlements in an attempt to rectify debt.⁵

³ Items 5 and 6.

⁴ Item 4.

⁵ Items 4 and 5.

In his Answer to the SOR, Applicant indicated he either had repayment plans or was negotiating repayment plans for the six delinquent debts that he admitted. However, he provided no proof of those plans or any payments on them.⁶

Credit reports in the record contain substantial evidence of the debts that Applicant denied. Some of the alleged debts became delinquent in 2004; a number of others became delinquent in 2006.⁷

In his Answer to the SOR, Applicant indicated that the debt in SOR ¶ 1.e was a duplicate of the one in SOR ¶ 1.f. Record evidence supports his claim. Both of those alleged debts are for the same exact amount. His credit report dated December 22, 2009, reflects that the creditor in SOR ¶ 1.f was a collection agency and the original lender on that debt was the creditor listed in SOR ¶ 1.e.⁸

In his e-QIP, Applicant indicated that his car was repossessed (SOR ¶ 1.h) because he failed to make timely payments. He also indicated that the car was sold at an auction and he was trying to work with the company to pay the deficiency balance. In responding to interrogatories in September 2011, he stated that he was trying to establish a payment plan with the creditor. In his Answer to the SOR, he denied this debt and stated the debt was resolved through the return of the car and payment of depreciation. He noted his credit reports showed no update in the status of this debt since 2010 and stated he was going to dispute this debt. He provided no documentation to show he had a legitimate basis for disputing this debt. This debt remains unresolved.⁹

Of the remaining denied debts, Applicant indicated that he was disputing the debt in SOR ¶ 1.c. He also stated that he had no record of the debts in SOR ¶¶ 1.i, 1.j, and 1.k and that those debts did not appear on his most recent credit report. Again, he provided no documentation showing he had a legitimate basis for disputing those debts.¹⁰

In his response to interrogatories, Applicant provided a personal financial statement (PFS) that reflected he had a net monthly income of \$4,386, monthly expenses of \$2,000, and monthly debt payments of \$885, which left him a net monthly remainder of \$1,501. The PFS did not address any of the debts alleged in the SOR. He provided no character reference letters or work performance evaluations.¹¹

⁶ Item 4.

⁷ Items 7 through 10.

⁸ Items 4 and 9.

⁹ Items 4, 5, and 6.

¹⁰ Items 4 and 6.

¹¹ Item 6.

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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

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 of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “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. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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 security concern for Financial Considerations is set out in AG ¶ 18 as follows:

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 delinquent debts that he was unable or unwilling to pay over an extended period. The evidence is sufficient to raise the above disqualifying conditions.

Five financial considerations mitigating conditions under AG ¶¶ 20 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 financial problems are ongoing, long-standing, and cast doubt on his current reliability, trustworthiness, and good judgment. I am unable to find that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's financial difficulties were not the result of conditions beyond his control. On the contrary, he noted that he had engaged in poor debt management. He also indicated that he went on a vacation to Las Vegas while he was dealing with these financial problems. He failed to show that he has made any payments towards the alleged debts. He provided no proof that he received financial counseling. Clear indications do not exist that his financial problems are being resolved or are under control. AG ¶¶ 20(b), 20(c), and 20(d) do not apply.

Applicant established that the debts in SOR ¶¶ 1.e and 1.f are duplicates. He disputes the other denied debts, but failed to provide documentation to substantiate those claims. AG ¶ 20(e) applies to SOR ¶ 1.e, but does not apply to the other debts.

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern for alcohol consumption:

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 several conditions that could raise security concerns under AG ¶ 22. One is potentially applicable in this case:

(a) alcohol-related incidents away from work, such as driving 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 was charged with DUI in 2007 and 2008. He pleaded guilty to reckless driving for both of those charges and was sentenced to community service and a fine. AG ¶ 22(a) applies.

Two alcohol consumption mitigation conditions under AG ¶ 23 are potentially applicable:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unique circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(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).

In late 2007 and early 2008, Applicant was charged with two DUI offenses. Both of those charges were resolved by Applicant pleading guilty to reckless driving. Those offenses occurred over five years ago. In March 2009, he was convicted of a probation violation for failing to perform the community service, but no evidence was presented to show that the probation violation resulted from his consumption of alcohol. Applicant indicated that he no longer drinks and drives. He now consumes alcohol in a responsible manner. AG ¶¶ 23(a) and 23(b) applies.

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 relevant facts and circumstances surrounding this case. 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 has served in the Air Force for about four years and received an honorable discharge. He has worked for his current employer for four years, has served in the Middle East, and has held a security clearance in the past without any security violations. Nevertheless, he has a history of financial problems. Some of the alleged debts date back to 2004. He has provided no track record of payments on the delinquent debts. He has not presented sufficient evidence to show that he will resolve those debts and will remain fiscally responsible in the future. Applicant's alleged Guideline G misconduct, even though mitigated under that guideline, is considered in making this whole-person assessment. Overall, the record evidence leaves me with questions and doubts about Applicant's suitability for a security clearance. Therefore, I conclude Applicant mitigated the security concerns under Guideline G, but failed to mitigate those concerns under Guideline F.

Formal Findings

Formal findings 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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant
Subparagraphs 1.e:	For Applicant
Subparagraphs 1.f – 1.i:	Against Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a – 2.d:	For Applicant

Decision

In light of all the circumstances presented by the record, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge