



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 12-01578  
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Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: Catie E. Young, Esquire

June 25, 2014

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On October 30, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G, E, and F for Applicant. 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) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On November 20, 2013, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing in this case. The case was assigned to this Administrative Judge on January 16, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 29, 2014, and I convened the hearing as scheduled by video teleconference on March 5, 2014. The Government offered Exhibits 1 through 12, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through X, which were also admitted without objection. Two additional witnesses testified on behalf of Applicant. DOHA received the transcript of the

hearing (Tr) on March 17, 2014. The record was left open until March 19, 2014 to allow Applicant to submit additional evidence into the record. Applicant submitted additional documents, which were identified incorrectly as Exhibits X through BB, but have now been correctly identified and entered into evidence without objection as Exhibits Y through CC. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and his witnesses, eligibility for access to classified information is denied.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record discussed above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 45 years old. He was married from 2002 to 2009, and he has two sons. Applicant served in the United States Army from 1990 to 2000. He earned a Master's of Science degree in Technology Management in 2005 and a Bachelor's Degree in Information Systems in 2004. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

#### **Paragraph 1 (Guideline G - Alcohol Consumption)**

The Government alleges that Applicant is ineligible for clearance because he has engaged in excessive alcohol consumption, which leads to the exercise of questionable judgement or the failure to control impulses. The following allegations are cited in the SOR as tending to show that:

1.a. It is alleged in the SOR that despite Applicant undergoing inpatient chemical and alcohol abuse treatment in 1989, he suffered alcohol abuse relapses as described in allegations 1.b. and 1.d., below.

Applicant admitted this allegation in his RSOR. He testified that he considered himself an alcoholic. During a period when he was in college and then he dropped out, he fell in with a bad group and started using marijuana, methamphetamine, and cocaine for a period of seven or eight months, approximately six days a week. His family encouraged him to seek help. He was 19 at the time. He attended an in-patient program for 28 days. Applicant testified that he stayed sober for about three years before his first relapse. Applicant averred that he did not use illegal drugs after 1989, but in 1991 he began consuming alcohol again while in the Army. He started drinking heavily, consuming alcohol on a nightly basis. (Tr at 102-107.)

1.b. It is alleged in the SOR that in 1996, Applicant was arrested and charged with (1) Driving Under the Influence of Alcohol and or Drugs (DUI), (2) Driving with .08% or higher Blood Alcohol Count, and (3) Failure to Pay the Fine. Count (2) was dismissed, and Applicant pled guilty to Count (1) and was sentenced to five days in jail, probation for five years, restricted driving privileges during probationary period, and

community service. He was also ordered to pay a fine of approximately \$1,215, and to complete an alcohol awareness program.

In his RSOR, Applicant admitted allegation 1.b. During his testimony, Applicant stated that this incident occurred after he had been consuming alcohol at a barracks party. After he had consumed a few drinks, he drove to a store, and he was arrested for the DUI charge described above. (Tr at 107-109.)

1.c. It is alleged in the SOR that despite Applicant completing a court ordered alcohol rehabilitation program in 1996, he suffered an alcohol abuse relapse as described in allegation 1.d., below. In his RSOR, Applicant admitted allegation 1.c. Applicant testified that after this 1996 incident, and the counseling he received, he was not convinced that he was an alcoholic, just that he should be more careful with his drinking. (Tr at 109-111.)

1.d. It is alleged in the SOR that in August 2008, Applicant was arrested and charged with (1) Driving Under the Influence of Alcohol and or Drugs (DUI), (2) Having a Measurable Blood Alcohol Content Level, and (3) Failure to Use Child Passenger Seat Restraints. Count (1) was dismissed, and Applicant pled guilty to Count (2) and was sentenced to summary probation for five years, 179 days custody pending, 14 days public service, attend a First Conviction program for nine months, and attend one Alcoholics Anonymous (AA) meeting a week for 18 months. Applicant's driving privileges were also restricted for six months, and he was fined approximately \$1,942. Applicant's probation has been scheduled to end in January 2014.

In his RSOR, Applicant admitted allegation 1.d. During his testimony, Applicant stated that when this incident occurred, he was consuming alcohol on a daily basis and this was a very low period in his life. He stated there is no question that he is an alcoholic. On the day of the incident, he had been drinking all day and he was driving his two sons in the car with him. He ran his vehicle off the road, and the police found him passed out with his two children in the vehicle. (Tr at 111-112.)

He testified that he ultimately plead guilty to DUI with a blood alcohol level of .15, which is almost twice the legal limit. While fortunately, his children were not physically harmed from the incident, he did feel that the older child was emotionally bothered by the incident. Applicant conceded that all of the requirements stated in the allegation as a result of his guilty plea were enforced. As part of the First Conviction Program, he attended weekly group meetings and additional counseling sessions with a counselor and him, regarding his alcohol consumption. Within a short time after this incident, Applicant's wife left him and moved with their children to the east coast. (Tr at 112-118.)

In 2009, Applicant attempted to remain sober, but he testified that he still drank on and off. During that year, his divorce became final. In March 2010, Applicant had gastric bypass surgery. As a requirement for the surgery, he had consumed no alcohol for a few months prior to the surgery. Within three weeks after his surgery, he was abusing his pain medication, using approximately twice as much as he should have been. He also started consuming alcohol again. On June 10, 2010, Applicant met with

his primary doctor, who told him if he did not stop consuming alcohol, he would not live much longer. As a result he had himself admitted to a detox center on that date. Applicant considers June 11, 2010, as his sobriety date. Applicant testified that he has not consumed any alcohol since that date four years ago, nor has he had the desire to drink since that day. Applicant intends to never consume alcohol again. (Tr at 120-134.) Exhibit C is a letter from Applicant's primary physician, who stated that Applicant has had several random drug tests including the most current one on February 12, 2014, all of which were negative.

## **Paragraph 2 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness.

2.a. It is alleged in the SOR that Applicant deliberately failed to inform his Facility Security Officer of his August 2008 DUI arrest because he was ashamed, embarrassed, did not want the people at work to know about it, and he feared losing his job. It was also alleged that Applicant conceded his failure to inform his Facility Security Officer in a Personal Subject Interview dated October 19, 2011, and in a response to an interrogatory sent to him on March 28, 2013. (Exhibit 2.)

In his RSOR, Applicant admitted this allegation. During the hearing, Applicant testified that he did not believe he was required to disclose the 2008 DUI arrest. He had not given the explanation that he was not required to disclose that information in the previous Personal Subject Interview, the interrogatory response or in the RSOR. He conceded that he should have reported the arrest, but he did not feel he wanted to disclose the information "for fear of possibly losing my job." (Tr at 134-135.)

2.b. It is alleged in the SOR that Applicant failed to provide truthful and candid answers to Questions asked under section 26 of an Electronic Questionnaires for Investigations Processing (e-Quip), executed by him on October 4, 2011. (Exhibit 1.) The questions asked whether in the last seven years, Applicant has had any bills turned over to a collection agency; Applicant has had any account or credit card suspended, charged off or canceled for failing to pay as agreed; or whether Applicant had been over 120 days delinquent on any debt. It also asked if Applicant is currently over 120 days delinquent on any debt. Applicant answered, "No," to all of these questions and listed no debts. It is alleged that Applicant deliberately failed to disclose that information concerning his finances and overdue debts as set forth in subparagraphs 3.b. through 3.u., below.

In his RSOR, Applicant denied this allegation, writing that at the time he completed his e-Quip he was in the early stages of his divorce and he believed he had "no gross delinquencies of debt." During his testimony, Applicant stated that when he completed his security clearance application in 2011, he was unaware that any of his debts were overdue or met any of the criteria in which he should have answered, "Yes." (Tr at 139.) Applicant stated that when he met with a Government investigator after he

completed the e-Quip, and he was confronted with all the bills he owed he was overwhelmed. He stated, "I knew there were a lot of bills out there. I didn't know the disposition of them." (Tr at 166.)

When questioned, Applicant admitted that at the time he completed his e-Quip he had already filed for bankruptcy. (See 3.a., below.) He claimed that while he knew he had debts and that was why he was filing bankruptcy, he did not know any of these debts was over 120 days overdue, nor did he understand what collection or charged off accounts were or that any of his debts were in these categories. (Tr at 183-190.)

### **Paragraph 3 (Guideline F - Financial Considerations)**

The SOR lists allegations 3.a. through 3.ii. regarding financial difficulties of Applicant.

3.a. The SOR alleges that in February 2012, Applicant filed a Chapter 13 Bankruptcy in the United States Bankruptcy Court, and that the bankruptcy is still in progress. In his RSOR, Applicant admitted this allegation. He testified that he initially filed a Chapter 13 Bankruptcy in March 2012, and not all of the creditors listed made a claim. (Tr at 140-142.)

3.b.- 3.ii. The SOR alleges that Applicant has 34 overdue debts, totaling \$123,042, that remained unpaid as of the date of the Statement of Reasons, October 30, 2013. In his RSOR, Applicant denied this allegation. He wrote that all of his delinquent accounts are part of his Chapter 13 Bankruptcy, and he makes payments through the trustee on a monthly basis.

Applicant testified that his current plan under the bankruptcy is to make monthly payments of \$845 for up to five years. At the time of the hearing, the plan had not yet been finalized, nor had the judge or trustee approved the plan. (Tr at 143-152, 175-180.) Exhibit Q confirms that Applicant made one payment of \$845 on February 21, 2014. Exhibits R and S establishes that Applicant took the financial courses required by the bankruptcy code.

Exhibit CC includes a letter from Applicant's bankruptcy attorney, dated March 14, 2014. He writes that the bankruptcy was filed on January 16, 2014, and the case is currently "pre-confirmation," with another creditor's meeting scheduled for April 21, 2014. He indicated that the meeting of creditors was continued because of the change of debtor's expenses, as Applicant is planning to move to a new location, which may result in a change in housing, utilities, and transportation expenses. He also indicated that the initial creditors list was incomplete and had to be modified. The attorney anticipated the plan would be approved in early summer. Exhibit CC also shows that the total amount owed to creditors holding unsecured nonpriority claims is \$168,719.

Applicant indicated that some of the overdue bills listed on the SOR resulted from gastric bypass surgery that he received. His divorce from his wife also contributed to his overdue bills, especially the largest debt, which was from student loans for Applicant and his wife that had been consolidated. Applicant also testified that he is in arrears on child support in an estimated amount of \$5,000 to \$7,000. Finally, Applicant testified

that the amount of \$114,000 that he owes in student loans cannot be discharged in bankruptcy, and he will still owe that amount after the bankruptcy. (Tr at 141, 156-157, 159-161, 180-181.)

## **Mitigation**

As mentioned above, two additional witnesses testified on behalf of Applicant. The first witness, who has known Applicant for four years, is a recovering alcoholic for the past 22 years, who now is employed as a Clinical Supervisor of 14 substance abuse programs. He met Applicant through Alcoholics Anonymous (AA) and comes in contact with him at least twice a week as they both attend AA meetings. He testified that when he first met him, Applicant was a broken man, suffering from depression, but over the years he has had an excellent recovery, and physically, emotionally, and mentally he is a new man. He lost more than 100 pounds from his surgery, he exercises, he no longer suffers from depression, and most significantly, he does not consume alcohol. He also attends AA meetings on a regular and consistent basis, and because of his sobriety program, while there are no guarantees, there is far less likelihood of Applicant suffering a relapse. (Tr at 39-59.)

The second witness was Applicant's adopted father. He is retired, but had been a Navy captain. Applicant's father had been aware for many years of Applicant's issues with over-consumption of alcohol. He and Applicant's mother participated in his in-patient alcohol treatment program in 1989, as described in 1.a. of the SOR. He also described how Applicant's drinking caused serious concern to his wife and him over the years. (Tr at 60-69.)

Applicant's father now sees his son two or three times a week. It is his belief that Applicant has been consistent and faithful to the AA program and "faithful to his sobriety." He has never seen Applicant consume any alcohol in the last four years, and he believes he will not drink alcohol in the future. (Tr at 70-76.)

Applicant also submitted a number of documents in mitigation. These included a letter, dated January 29, 2014, from an individual, who has been identified as a Licensed Clinical Social Worker and a Licensed Clinical Addictions Counselor. (Exhibit G.) He wrote to confirm that Applicant had attended counseling from February 15, 2007, through December 15, 2007, after being referred by Federal Probation. He wrote that Applicant "responded well to the individual counseling and attending AA once a week. The positive response was demonstrated by [his] maintaining abstinence and commitment to stay sober."

There were 7 extremely positive character letters submitted on Applicant's behalf. (Exhibits A through G.) One was from his physician, which has been reviewed above. (Exhibit C.) Another is from his father, who as reviewed above, testified at the hearing. (Exhibit G.) All of the other letters spoke in very laudatory terms as they described Applicant. Exhibit A was a letter from Applicant's ex-wife, who spoke of Applicant's more than three years of successful sobriety. He also was described by a co-worker as someone of the highest "professionalism, honesty and integrity in all aspects of his work.

Applicant introduced a number of awards and recognitions that he received during his civilian and military employment. (Exhibit I.) Applicant also submitted Exhibits R and S, which establish that Applicant took two credit counseling sessions required for bankruptcy.

### **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 are useful 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 over-arching 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 as to 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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**

### **Paragraph 1 (Guideline G - Alcohol Consumption)**

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.

Applicant's alcohol consumption resulted in the criminal conduct and convictions listed in subparagraph 1.b. and 1.d.. The Government established that Applicant was involved in “alcohol-related incidents away from work,” and “binge consumption of alcohol to the point of impaired judgement.” Disqualifying conditions AG ¶ 22(a) and (c) apply to this case.

In reviewing the mitigating conditions, I find that ¶ 23(a) and 23(b) are applicable because Applicant’s last alcohol related incident occurred in 2010, and Applicant has completely abstained from alcohol consumption since 2010. I also find these mitigating conditions apply because of the credible testimony of Applicant that he strongly intends not to consume alcohol in the future, and the testimony of the other two witnesses of Applicant’s commitment to sobriety. Therefore, I find Paragraph 1 Guideline G for Applicant.

### **Paragraph 2 (Guideline E - Personal Conduct)**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, unreliability, and untrustworthiness.

In reviewing the disqualifying conditions under Guideline E, I conclude that there was “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” by Applicant. I find that even if Applicant did not know all of his overdue debts, he knew or should have known that some of the 34 debts listed



on the SOR were more than 120 days overdue or were charged-off or collection accounts, especially when he had already completed a divorce where his debts were reviewed, and he had engaged an attorney and begun the process of filing for bankruptcy. Applicant could give no reasonable explanation for not informing the Government that he had any overdue debts.

Therefore, I find ¶ 16 (a) applies against Applicant. I do not find any mitigating condition under ¶ 17 is applicable. I, therefore, resolve Guideline E against Applicant.

### **Paragraph 3 (Guideline F - Financial Considerations)**

The security concern relating to the guideline 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 and could potentially apply in this case. Under AG ¶ 19 (a), "an inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19 (c), "a history of not meeting financial obligations" may raise security concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant has accumulated significant delinquent debt.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties: Under AG ¶ 20 (b), it may be mitigating where "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." While some of Applicant's overdue finances occurred as a result of his divorce, a significant amount of his debts were due to an elective medical procedure, which could not be considered unexpected so this mitigating condition would not be applicable. Additionally, while Applicant has acted responsibly by engaging the services of a law firm to use the legal remedy of bankruptcy, the bankruptcy has not yet been approved by the judge or trustee, and even if it is eventually is approved, Applicant will still owe more than \$116,000 for his student loans after the bankruptcy is discharged. Therefore, I cannot find that this mitigating condition is a factor for consideration in this case.

Finally, I do not find that AG ¶ 20(d) is applicable because even though Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," by filing for bankruptcy, as reviewed above, it is too soon to determine that his finances are being resolved. I also do not find that any other mitigating condition applies under Guideline F.

I conclude that at this time Applicant has not reduced or resolved his overdue debt, nor has he mitigated the financial concerns of the Government. Therefore, I resolve Guideline F against Applicant.

### **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 the 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. Based on all of the reasons cited above as to why the disqualifying conditions apply under Guidelines E and F, and none of the mitigating conditions apply under these guidelines, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

### **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:	FOR APPLICANT
Subparagraphs 1.a. - 1.d.:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a. - 2.b.:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT

Subparagraph 3.a. - 3.ii:

Against 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul  
Administrative Judge