



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 12-10956

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: *Pro se*

05/15/2017

**Decision**

HOWE, Philip S., Administrative Judge:

On April 13, 2012, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On July 24, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G (Alcohol Consumption), E (Personal Conduct), and F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on October 6, 2015, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request. Department Counsel was prepared to proceed on August 31, 2016, and I received the case assignment on September 19, 2016. DOHA issued a Notice of Hearing on November 18, 2016, and I convened the hearing as scheduled on December 20, 2016. The Government offered Exhibits 1 through 8, which were received

without objection. Applicant testified. He did not submit any exhibits. DOHA received the transcript of the hearing (Tr.) on January 3, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **Procedural and Evidentiary Rulings**

### **Motion to Amend SOR**

Department Counsel moved to amend the SOR by adding Subparagraphs 1.l and 1.m. They allege Applicant was charged with a June 30, 2007 driving while intoxicated offense, and Subparagraph 1.m. he was charged with a July 21, 1997 driving while intoxicated offense. Applicant admitted both new allegations and had no objection to the amendments. I granted the Department's motion. (Tr. 26-30)

### **Findings of Fact**

In his Answer to the SOR Applicant denied the allegations in Subparagraphs 1.a, 1.b, 1.k, and Paragraph 2. He admitted the allegations in Subparagraphs 1.c to 1.j, Subparagraphs 3.a to 3.j. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 53 years old, married, and has three adult children. His two sons live at his house but do not pay much in rent, room and board, and Applicant could not explain why they do not contribute more to his household. He has been an electronics technician for the past 27 years. He works for a defense contractor. (Tr. 17, 18, 21, 22, 52, 56, 57; Exhibit 1)

Under the Alcohol Consumption guideline (Paragraph 1), Applicant is alleged to have committed 10 alcohol-related offenses between 1984 and May 2012. He also is alleged to consume alcohol while driving about twice a month and continuing to commit such actions. Six offenses involved driving while intoxicated (DUI), two involved public intoxication (PI), and two were possessing open alcoholic containers (POAC). He is also alleged to consume alcohol to excess and to the point of intoxication. These same events are the basis of the Personal Conduct allegation in Paragraph 2. (Tr. 22-45; Exhibits 2-4, 8)

Applicant started consuming alcohol when he was about 20 years old. The November 1984 offense was a speeding and DUI offense which occurred after he departed a bar and drove home (Subparagraph 1.j). Applicant admitted the January 1986 public intoxication arrest. (Subparagraph 1.i). He also admitted the July 1986 DUI, which occurred after he came out of a bar and tried to drive home (Subparagraph 1.h). Applicant admitted from the mid-1980s to the early 1990s he drank about three times per week, consuming mixed drinks and eight to ten beers at a sitting. Then, in July 1991 he was charged with reckless driving and operating a motor vehicle while intoxicated. (Subparagraph 1.g) In November 1991, he was charged with DUI. (Subparagraph 1.f).

In December 1995, he was charged again for DUI (Subparagraph 1.e). He also admits to being convicted for a DUI arrest on July 21, 1997. (Subparagraph 1.m). Then, again, on June 30, 2007, Applicant was arrested for DUI and found guilty, fined \$200 and court costs of \$454 with a suspended 30 day jail sentence and two years of probation (Subparagraph 1.l). Applicant was charged in June 2008 with POAC in a motor vehicle, found guilty, fined \$200, and received a 30 suspended jail sentence and two years of probation (Subparagraph 1.d). On May 23, 2012, after he completed the e-QIP, he was charged with the POAC in a motor vehicle and found guilty of that charge (Subparagraph 1.c). He purchased a container of beer on his way home and started consuming it when he was seen by a police officer and stopped. (Tr. 21-33; Exhibits 2-4, 8)

Applicant testified that as he is now older he no longer goes out to bars and drinks. He has to start work at 5:30 a.m. He claims he hardly drinks now and only at home. He claims he was more of a "social drinker" than an alcoholic. He drinks alcohol only once a week, from two to six beers. He had alcohol education as part of his sentences for the various offenses. He stated at the hearing that while his history looks bad he has had a security clearance with no problems and can be trusted. Since 2012 he could not remember any additional alcohol offenses. (Tr. 25, 29-34, 53, 54; Exhibits 2-4, 8)

Applicant has a history of filing bankruptcy actions to discharge or organize repayment plans for his debts. Applicant filed a Chapter 13 bankruptcy in October 2003 and was discharged in August 2005 (Subparagraph 3.j). This bankruptcy was caused by Applicant's wife's surgery and medical expenses. She is currently on disability as a result of that condition in 2003. Later, he filed a Chapter 13 bankruptcy petition in January 2013 that was closed in July 2016 (Subparagraph 3.a). Meanwhile, after medical leave for a surgery, Applicant started a new bankruptcy plan under another Chapter 13 action he filed in April 2016. He did not explain how he had two Chapter 13 bankruptcies going at the same time. On the latest filing he marked the block that asked if he filed bankruptcy in the past eight years with a negative answer. Under that confirmed Chapter 13 plan he pays \$462 every two weeks to the bankruptcy trustee for 60 months. This bankruptcy is Applicant's fifth petition because he filed two earlier bankruptcy actions in the 1990s. Applicant filed a Chapter 7 bankruptcy in November 1991 that was closed in February 1992. Then he also had a Chapter 13 bankruptcy that he filed in March 1992 and closed in 1995. He filed these earliest two bankruptcies because of medical debts. The Government submitted an exhibit listing all of Applicant's bankruptcy actions. (Tr. 35-45; Exhibits 5-7)

Regarding the specific delinquent debts under Paragraph 3, Applicant has seven unpaid medical collection accounts totaling \$415, dating at least from 2008. He owes a finance company \$37,014 for his home mortgage. He also owes \$16,635 on student loans that he paid down to \$2,000 but the bankruptcies prevented him from continuing to make payments so the unpaid debt has climbed again to that amount. The delinquent medical debts are included in his latest bankruptcy. Applicant has not had any financial counseling. Applicant admitted he withdraws money from his Internal Revenue Code

(IRC) Section 401(d) (401(k) instead of 401(d)?) retirement twice a year to pay for expenses. Applicant pays \$1,200 monthly for his mortgage because he has refinanced the mortgage often. He bought the house 25 years ago for \$44,500 but had to use the refinancing and retirement account withdrawals to pay debts after his wife became ill and lost her job several years ago. They borrowed money “to survive while she had no income.” They sold six acres of land they owned for \$55,000 several years ago and paid off several of these loans. He also testified he works very hard and a lot of overtime. (Tr. 44-55; Exhibits 5-7)

## **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 (AG ¶ 2(a)). The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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**

### **Guideline G, Alcohol Consumption**

AG ¶ 21 expresses the security concern pertaining to 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.

AG ¶ 22 describes seven conditions that could raise a security concern and may be disqualifying. Two conditions may apply:

- (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; and
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

Applicant has 10 alcohol related offenses that he committed between 1984 and 2012, including one after he completed his e-QIP. He has a history of alcohol consumption that continues to the present day. He contends he now has reduced his drinking and only drinks at home. There is no independent verification of those assertions. AG ¶ 22 (a) and (c) are established.

AG ¶ 23 provides four conditions that could mitigate security concerns. One may apply:

- (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.

Applicant's last arrest was in 2012, but he continues to consume alcohol. While four years have passed since his last arrest, because he continues to drink alcohol, the

potential for further arrests exists. His past behavior was frequent. His conduct casts doubt on his current reliability, trustworthiness, and good judgment. This mitigating condition does not apply.

## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, 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.

AG ¶ 16 describes seven conditions that could raise a security concern and may be disqualifying. Two conditions may apply:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's personal conduct alleged in the SOR refers to his many alcohol related incidents and offenses occurring between 1984 and 2012, and his continued use of alcohol. The pattern of these incidents shows he has a difficult time controlling his actions regarding the use of alcohol. They demonstrate questionable judgment, untrustworthiness, unreliability for compliance with laws, and other characteristics showing Applicant may not properly safeguard protected information. AG ¶ 16 (c) is established.

Applicant's continued consumption of alcohol with resulting adverse legal consequences over a 28 year period shows he conducts himself in the public in a way that affects his personal, professional, and community standing. Applicant commits

criminal acts when he consumes too much alcohol and is arrested and charged with offenses by the local law enforcement community. Again, the pattern of his behavior shows a lack of control and appropriate social interactions. His DUI actions put himself and other drivers at risk on the public highways. The passage of four years since his last offense is not significant in view of the 28 years of prior illegal activity. AG ¶ 16 (e) is established.

AG ¶ 17 provides seven conditions that could mitigate security concerns. None apply to Applicant's actions:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant has not taken prompt and good-faith efforts to correct his alcohol-related problems and history. AG ¶ 17 (a) does not apply. There was no improper advice by any authorized person or legal counsel. AG ¶ 17 (b) does not apply. His offenses are not minor or that far in the past that they do cast doubt on his reliability, trustworthiness, and good judgment (AG ¶ 17 (c)). Applicant has not obtained

counseling or changed his behavior or taken other positive steps to show his past pattern of misconduct will not recur. AG ¶ 17 (d) is not established. Applicant has not taken positive steps to reduce or eliminate vulnerability to coercion. AG ¶ 17 (e) is not established. Finally, the last two mitigating conditions are not applicable on their own terms.

## **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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated seven delinquent debts totaling \$415 from 2008 to the present time that remain unpaid. He owes \$37,014 on his mortgage. During the hearing he admitted he has unpaid student loans of \$16,635 that are not listed in the SOR. He pays on them for a time and then does not pay. He filed Chapter 13 and Chapter 7 bankruptcies from 2003 to the present time. He now pays \$462 twice a month to the bankruptcy trustee in his latest Chapter 13 action. Applicant has a history of not paying his debts in a regular manner and using bankruptcy as a way to repay or discharge his debts. AG ¶ 19 (a) and (c) apply.

The evidence raises all of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. One condition may be applicable:

- (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.



Applicant takes the position that his wife's loss of employment for several years caused his financial problems. He did not show that he sought viable methods to mitigate that loss of income. Instead, he borrowed money to maintain his life style. He had to sell land to repay those debts, and yet he continued to incur debt leading to his latest bankruptcy. Applicant has not acted responsibly under these circumstances. AG ¶ 20 (b) is not applicable.

### **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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant's pattern of alcohol use and array of related criminal actions, coupled with his pattern of financial difficulties during more than the past decade, shows serious problems exist in his life. His alcohol use and financial mismanagement issues began 28 years ago. He has a long history of problems with alcohol and finances. His actions were all voluntary with no indication of rehabilitation or permanent behavioral changes. All his actions are likely to continue.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his alcohol involvement, personal conduct, and financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraph 1.a to 1.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 3.a to 3.j:	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.

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PHILIP S. HOWE  
Administrative Judge