



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



In the matter of:

)  
)  
)  
)  
)  
)

ISCR Case No. 14-02323

Applicant for Security Clearance

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

10/26/2016

---

**Decision**

---

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline G (Alcohol Consumption), Guideline F (Financial Considerations), Guideline J (Criminal Conduct). The SOR was dated August 27, 2015. 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) implemented in September 2006.

Applicant timely answered the SOR and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on February 2, 2016. Applicant received a complete file of relevant material (FORM) on March 10, 2016,<sup>1</sup> and was provided an opportunity to file objections and

---

<sup>1</sup>The Government submitted seven items for the record.

submit material to refute, extenuate, or mitigate the Government's case. Applicant timely submitted a response, which was marked as AX A and entered into the record . The case was assigned to me on October 14, 2016. Based on a review of the case file, eligibility for access to classified information is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations) and Guideline G (Alcohol Consumption), with the exception of 2.e. He admitted the allegations under Guideline J (Criminal Conduct).

Applicant is a 47-year-old employee of a defense contractor. He served in the U.S. Marine Corps from 1989 until 2001, receiving an honorable discharge. He is divorced and has one child. Applicant has worked for his current employer since 2001. He has held a security clearance for many years. (Item 3)

### **Financial Considerations**

Applicant admits to 5 delinquent debts alleged in the SOR in an amount of approximately \$13,000. (Item 2) The delinquent collection accounts include a judgement, collection accounts, and student loans. The SOR also alleges failure to file federal and state income tax returns from 2010 to tax year 2013. He has not provided any documentation concerning payments on any of the delinquent debts.

Applicant states that his financial problems began when he was divorced in 2001. He remarried and he had a child with his new wife. For various reasons, his second wife and son remained in a country outside the United States. He spent great sums of money traveling back and forth to see his wife and son, causing financial stress and emotional stress. The wife and son never came to the United States. Eventually, she abandoned her house and disappeared with Applicant's son in about 2013. He provided for them financially while he worked in the United States until 2013, when she disappeared. He borrowed money from his mother to help with expenses.

Applicant admits that he has not filed tax returns for the years in question because he could not locate his wife to sign the tax forms. He stated that he is still "working things out" with the IRS and the state. He believes he should have them filed with a year. He noted that he has been paying his taxes. He believes he will be owed refunds. Applicant has been steadily employed in his current position since 2001. He did not present any information that he was unemployed. (Item 3)

Applicant acknowledged and disclosed his debts to the Government. During his 2014 interview with investigators, he stated he intends to pay his debts. He stated that the student loans are in forbearance and that he is making payments and it should be paid within five years. (Item 7) He has not furnished any receipts for any payments or any structured plan to repay the SOR debts.

## **Alcohol Consumption**

Applicant admitted his arrests and convictions for driving under the influence in 2010, 2006, and 2002. In 2001, he was charged with open container. His latest alcohol-related incident in 2010 resulted in a sentence of 180 days jail suspended and fined. However, in March 2014 a bench warrant was issued for failure to complete a driving under the influence program (DUIP). He was also found guilty in 2006 and sentenced to five years summary probation. He spent four days in confinement, was in an offender program for six months, and was fined. In 2002, he was also responsible for a hit and run. He was placed on 5 years summary probation and sentenced to 180 days jail suspended and fined. Applicant denied the 1993 arrest and charge for trespass. (Item 2)

Applicant's explanation for his use of alcohol and drinking too much involved his second wife who was living abroad with his son. He learned that she had another son in 2006, and he did not believe it was his son. He stated that he was heartbroken and did not know how to handle the pain. (Response to the FORM) He admits that throughout his life when he suffered emotional hardship, he drank to excess. He realizes this is not an excuse but he was not in a proper frame of mind. Applicant noted on his SF 86 that he was ordered to attend AA meetings, but he does not note that he attended. In his 2014 interview, he noted that he was not attending AA and has not had any alcohol counseling. (Item 7) In his 2014 interview, he stated that he continues to drink but does not drink and drive. He agreed that alcohol has had a negative impact on his life.

Applicant noted in his Response to FORM that he has had a bumpy road, but has always pulled through. He is proud of his military service as well as his civilian. He noted that he has never had a security violation and has been trusted to handle sensitive documents. He enclosed a list of names of character witnesses. (AX A)

## **Policies**

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”<sup>2</sup> The burden of proof is something less than a preponderance of evidence.<sup>3</sup> The ultimate burden of persuasion is on the applicant.<sup>4</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of 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.”<sup>5</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>6</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>7</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

### **Guideline F, Financial Considerations**

AG ¶ 18 expresses the security concern pertaining to financial considerations:

---

<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>5</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits to delinquent debts in the amount of approximately \$13,000. The debts are confirmed in his credit reports. They span from 2010 until the present time. He did not file his federal and state tax returns for tax years 2010 to 2013. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(c). And 19(g).

AG ¶ 20 provides conditions that could mitigate security concerns:

- (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;
- (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; and
- (f) the affluence resulted from a legal source of income.

Applicant has good intentions to pay his delinquent debts. However, he has not provided any information to show that he has paid the delinquent debts or has a plan to repay the debts. He stated that he is working on filing the taxes but he did not provide evidence of the actual filing of his past due tax returns. He has not reported financial counseling. He has been gainfully employed since 2001, and has not raised any circumstances beyond his control that would contribute to his financial problems. None of the mitigating conditions apply.

## **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations."

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying:

- (a) a single serious crime or multiple lesser offenses;
- (b) discharge or dismissal from the Armed Forces under dishonorable conditions;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;
- (d) individual is currently on parole or probation; and
- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant's admissions and the evidence of alcohol related arrests and convictions from 1993 to 2010 are sufficient to raise AG ¶¶ 31(a) and (c).

AG ¶ 32 provides four conditions that could mitigate security concerns:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

After reviewing the mitigating conditions, I find that none of them fully apply in this case. Applicant's behavior occurred between 1993 and 2010. There is a 2014 bench warrant for failure to appear in court. Although six years have elapsed, Applicant has not provided information establishing that he is rehabilitated. There is no information in the record concerning completion of his community service. I find that he has not mitigated the security concern under criminal conduct.

### **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 conditions that could raise a security concern and may be disqualifying:

(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;

(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;

(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;

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

(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;

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and,

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant admits the history of alcohol related incidents from 1993 to 2010. The record reflects that there is a 2014 warrant for failure to appear in court. He states that he has not had any alcohol counseling, He still drinks but he states that he does not drink and drive.

AG ¶ 23 provides conditions that could mitigate security concerns:

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



(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and,

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant admitted his alcohol-driving incidents. He was ordered several times to complete programs, but he does not attend AA and states that he has not attended counseling. He admits that he has turned to alcohol in difficult times. I have doubts about his judgment and reliability. After considering the mitigating conditions outlined in AG ¶ 17, I conclude Applicant has not mitigated the security concern under alcohol consumption.

### **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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant served honorably in the military. He has worked in the civilian defense industry since 2001. He has no noted security violations. Applicant provided for his family living abroad. He does not know how to contact them at this time. He fell into financial distress during the marriage. He turned to alcohol and has a history of alcohol driving incidents, which includes arrests, convictions, guilty pleas, and probation. Granted, the last offense was in 2010. The choices he made over the years indicate lack of judgment.

Applicant has not provided any information to show that he is a changed person or that he has taken action to resolve his delinquent SOR debts. At this point, I have doubts about his judgment and reliability. Any doubts must be resolved in favor of national security. Applicant has not met his burden in this case. He has not mitigated the security concerns under financial consideration, criminal conduct, and alcohol consumption. Clearance is denied.

### **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 F:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a-2.e:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	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 a security clearance. Clearance is denied.

---

NOREEN A. LYNCH  
Administrative Judge

