



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-02845

Appearances

For Government: Rhett Petcher, Esquire

For Applicant: *Pro se*

03/24/2017

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On December 9, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G (Alcohol Consumption) and Guideline F (Financial Considerations).¹ In a notarized document on January 29, 2016, Applicant responded to the allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on June 30, 2016. DOHA issued a hearing notice on June 30, 2016, setting the hearing for August 17, 2016. The hearing was convened as scheduled.

The Government offered 12 documents, accepted without objection as exhibits (Exs.) 1-12. Applicant offered testimony and three documents, accepted as Exs. A-C. The record was kept open until September 9, 2016, in the event the parties wished to submit additional materials. The transcript (Tr.) was received on August 25, 2016. Additional materials from Applicant were forwarded to me and received on September 9, 2016, without objection, I marked them as Exs. D-G and the record was closed.

¹ 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 DOD on September 1, 2006.

Findings of Fact

Applicant is a 57-year-old cyber security specialist who has been with the same employer for over a year. A high school graduate, he finished a trade school program in computers. He is married with four adult step-children, one of whom lives at home.

In or about 1981, at age 21, Applicant pled guilty to driving under the influence after being charged with that offense and speeding. He had been drinking for a few years, but not generally to excess. His drinking increased while in the military from about 1983 to 1987. (Tr. 15) He reduced his drinking after his discharge. (Tr. 16) In 1989, however, he was found guilty of driving under the influence, speeding, and reckless driving. In addition, in 2005, he was charged with public intoxication.

In February 2012, Applicant was arrested and found guilty of driving while intoxicated. This occurred while running errands the morning after hosting a football party. The court ordered him to attend treatment for six months at a local counseling center, which he attended from June 2012 to January 2014. His treatment was extended as a consequence of relapsing and having one drink during the 2012 holiday season. (Tr. 23) At the treatment facility, he was diagnosed as alcohol dependent. The evidence is unclear, however, whether he was treated by a medical practitioner or licensed clinical social worker (LCSW), as only a licensed professional counselor (LPC) and multiple case workers are referenced with regard to his alcohol treatment. (Ex. 3)

Although he successfully completed that program, Applicant continues in individual counseling. He has been with his present LPC since December 15, 2013. (Ex. D) He no longer consumes alcohol, preferring total sobriety over measured drinking. It has been "a couple of years" since he was last intoxicated. The last evidence of intoxication was February 2012. In the interim, he once tasted wine. (Tr. 22) He understands that he is an alcoholic and that sobriety is a lifelong focus. (Tr. 24)

From January 2008 to August 2008, Applicant was unemployed and started to acquire delinquent debt. Short of financial resources, he made choices between which bills he could pay and which he could not. (Tr. 28-29) He has been working on a relatively steady basis since that time. The first thing he did once his finances stabilized was pay off a car loan and address some of his wife's bills. (Tr. 25) He only recently found himself able to make any notable progress on his debts. (Tr. 25) In November 2015, he refinanced his house after falling behind on his mortgage payments for about two months. He received the SOR in December 2015.

At the August 2016 hearing, Applicant provided evidence of satisfaction of the debt at 2.a for \$1,306 (Ex. E), and the Government concurred that the debt cited at 2.b for \$984 was paid. (Ex. A; Tr. 26-27, 29) Applicant submitted Ex. F, which shows payments on the two medical accounts for \$126 and \$53, respectively, cited at 2.e and 2.f. The parties agreed that the debt at 1.k for \$866 was settled. (Tr. 44; Ex. 7 at 4)

In September 2016, after the hearing, Applicant forwarded what was marked as Ex. G. He notes that a page of bank account activity is in reference to “Guideline F: Section C: Highlighted.” The highlighted line reflecting a payment of \$1,000 to a law firm appears to have been a payment on, or settlement of, the adverse judgment for \$1,687 noted in the SOR at 2.c from 2010. (Ex. G)

Applicant does not recognize the medical accounts at 2.d-2.h and 2.l-2.m, amounting to about \$1,300. There is no documentary evidence he has tried to verify or dispute these balances.

The debts at 2.i and 2.j, for \$2,038 and \$6,681, respectively, are for student loans. Applicant provided a page-long payment history from a student loan consolidator, but the evidence does not link the loan payment schedule with the accounts represented in 2.i and 2.j. (Ex. B) It also fails to clarify whether it shows payment includes or pertains to the loan debt of \$38,655 reflected at 1.n. Applicant did not later provide additional documentation linking his payments to these cited accounts.² (Tr. 38)

In sum, at issue are 14 delinquent debts, set forth in the SOR as 1.a-1.n. They amount to approximately \$53,500, Applicant provided documentation reflecting he has satisfied the debts at 2.a, 2.b, 2.e, 2.f. and 2.k, and expended \$1,000 toward the adverse judgment at 2.c. This represents \$4,335 documented to have been applied toward the debt at issue in the SOR. No action has been documented with regard to progress involving 2.d-2.h, 2.i-2.j, or 2.l-2.m, which includes the largest debt (\$38,655).

Applicant did not provide documentary evidence indicating he has received financial counseling. There is no documentary evidence he has disputed any of the debts. While he did not describe his methodology for satisfying these debts, he appears to have focused his attention on like kinds of debts. He is still helping support one of his grown step-children, who has intermittent employment working with window treatments. (Tr. 49) Applicant’s wife stopped working January 2016 after a November 2015 cancer diagnosis. (Tr. 49-50) She has been completing treatment. At the end of each month, Applicant has a net monthly remainder of about \$1,000. (Tr. 50).

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s adjudicative goal is a fair, impartial,

² Applicant did, however, provide evidence of payment on an adverse judgment not at issue in the SOR for about \$1,500. (Ex. C)

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.” In making a decision, all available, reliable information must be considered.

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.

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 applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Guideline G – Alcohol Consumption

Excessive alcohol consumption is a security concern because it 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 ¶ 21)

Applicant drank alcohol to excess, and sometimes to the point of intoxication, from his late teens through about December 2012. Aside from a one drink relapse during the 2012 holiday season, his only consumption of alcohol was a taste in about 2013. This is a turnaround from his earlier years, when he pled no contest to driving under the influence in about 1981, was found guilty of that same offense along with speeding and reckless driving in 1989, found guilty of driving while intoxicated in February 2012, and was deemed alcohol dependent during treatment between 2012 and 2013. These facts raise Alcohol Consumption Disqualifying Conditions AG ¶ 22:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent, 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.

I considered Alcohol Consumption Mitigating Conditions AG ¶ 23

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

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of action taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser); 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 licensed social worker who is a staff member of a recognized alcohol treatment program.

AG ¶ 23(d) does not apply here, nor did AG ¶ 22(e)-(f) apply as disqualifying conditions, because the documentary evidence offered at Ex. 3 fails to show whether Applicant was treated by either a medical practitioner or a LCSW. Applicant has been sober, however, for over five years. He acknowledges his alcoholism, recognizes this disease is a lifelong challenge, and has continued to work with a LPC after successful completion of a court ordered program. He has not suffered any relapses since completing that program. He remains abstinent. He noted no current stressors or obstacles deleterious to his continued abstinence. Alcohol consumption mitigating conditions AG ¶ 23(a)-(b) apply.

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence indicating that Applicant has multiple delinquent debts, amounting to about \$53,500 in delinquent debt. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance related security concerns:

AG ¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant pinpoints the genesis of his financial distress to a period of unemployment that lasted from January 2008 to August 2008. Over time, he has acquired at least 14 delinquent debts amounting to about \$53,500. He testified that it took him a long time to recover from this 2008 unemployment period, and that he only recently has had excess available funds to devote to repayment of the long-delinquent debts at issue. This excess is presently a monthly net remainder of about \$1,000.

Applicant failed to clarify why it took so many years to financially recover from a 2008 eight-month period of unemployment. While he mentions efforts to address a few other debts, including a home refinance obtained after falling behind on his house payments, there is scant indication as to why these particular debts remained largely unaddressed. Therefore, while unemployment may have initially contributed to the acquisition of these debts, the lack of more information regarding contemporaneous action to address them limits the applicability of AG ¶ 20(b).

To his credit, since receiving the SOR in December 2015, Applicant has applied about \$4,350 toward his nearly \$39,000 in delinquent debt and adverse judgments. He testified about more strides to address some of the other debts, but no corroborating documentation was forthcoming. While Applicant was credible, documentary corroboration is needed to support his statements. Moreover, there is no documentary evidence indicating that he has received financial counseling, or either disputed or sought verification of any of the accounts at issue. Therefore, while his documented actions raise AG ¶ 20(d), more documentation is needed to show that his finances are under control. None of the other mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed at AG ¶ 2(a). The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person analysis based on the record. In addition to Applicant's alcohol and financial issues, I considered his present life, candor at the hearing, and credible explanations.

Applicant is a 57-year-old cyber security specialist. A high school graduate, he completed a vocational trade program related to his field. He has served in the United States military. Applicant's wife is presently unemployed, after recently undergoing cancer surgery. One of Applicant's four grown step-children lives at home, but does not contribute to the household upkeep.

After years of alcohol use, and multiple citations for driving under the influence, Applicant was diagnosed as alcohol dependent and received about 18 months of treatment. He completed that treatment and continues to receive LPC support. He has stayed sober for over five years. He understands the nature of the disease, his illness, and the need to persevere with appropriate support. Applicant is to be commended for his success to date. He has mitigated alcohol consumption security concerns.

With regard to his finances, Applicant presently retains a net monthly remainder of about \$1,000. It would seem his present finances are under control. Remaining at issue, however, are delinquent debts he connects with a period of unemployment in 2008. After new employment is secured following a period of unemployment, a period of time may be needed to reconnoiter and reconsider one's acquired debts and accumulated bills. Applicant has had a notably long period of recovery, and he has been on notice about the specific debts at issue since receiving the December 2015 SOR.

Moreover, the status of many of Applicant's debts, including one exceptionally large student loan, remains unclear. Applicant testified, for example, that his student

loans were consolidated and in repayment, but he failed to mesh his documentary evidence with the specific account information provided for the accounts at issue. He also failed to provide documentation showing actual payments on accounts he stated have been paid, or documentation reflecting any efforts to discern the origin or accuracy of other accounts, such as the alleged medical debts.

This process does not require an Applicant to satisfy all delinquent debts at issue. It does, however, expect that an Applicant describe a reasonable plan for addressing his delinquent debts, and provide documentary evidence reflecting that such a plan is being successfully implemented. Here, despite credible testimony, he failed to document his efforts in a way showing he is getting his debt under control. This is especially true given the timeframe involved and his net monthly remainder. Given these facts, I find that financial considerations security concerns remain unmitigated.

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.g:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	For Applicant
Subparagraph 2.d:	Against Applicant
Subparagraphs 2.e-2.f:	For Applicant
Subparagraphs 2.g-2.j:	Against Applicant
Subparagraph 2.k:	For Applicant
Subparagraphs 2.l-2.n:	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. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge