



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04325

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

08/12/2016

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations, alcohol consumption, and criminal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 31, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations), G (alcohol consumption), and J (criminal conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on May 4, 2015, and requested a hearing before an administrative judge. The case was assigned to me on March 2, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 10,

2016, scheduling the hearing for May 23, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through J, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 1, 2016.

### **Findings of Fact**

Applicant is a 31-year-old employee of a defense contractor. He has worked for his current employer since December 2013. He worked for another defense contractor at the same location from May 2012 to November 2013. He served on active duty in the U.S. military from 2003 until he was honorably discharged in 2008. He continued in the reserves after his discharge. He has the credits for an associate's degree, but he has not yet received a diploma. He is married with two minor children.<sup>1</sup>

Applicant received nonjudicial punishment (NJP) under the Uniform Code of Military Justice (UCMJ) in 2004 for drunkenness and incapacitation for duty. He was reduced one pay grade, restricted to limits, and forfeited pay. Applicant stated that he passed out and had to be taken to the hospital where he was treated for alcohol poisoning. His heart stopped at one point, and he had to be revived by cardiopulmonary resuscitation (CPR).<sup>2</sup>

Applicant was arrested in October 2009 and charged with driving while intoxicated (DWI). His blood alcohol concentration (BAC) was .243%, or about triple the legal limit. He pleaded guilty. He was sentenced to 32 hours of community service, a fine, and attendance at a safe driving and alcohol awareness class.<sup>3</sup>

Applicant worked as a bartender from about October 2010 to March 2011. He had been drinking at the bar and another establishment in March 2011 before driving. He lost control of his car, drove it off the road, and hit a fence. He did not have auto insurance at the time. He was arrested and charged with DWI – second offense; careless operation; operating vehicle with suspended license; and resisting an officer with force or violence. He pleaded guilty to DWI – second offense; careless operation; and resisting an officer. The suspended license charge was dismissed. He was sentenced to a fine, probation, and outpatient rehabilitation, which included group and individual therapy sessions, attendance at Alcoholics Anonymous (AA) meetings, random urinalysis tests, and a curfew. He completed the rehabilitation program in April 2013.<sup>4</sup>

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<sup>1</sup> Tr. at 19-22, 38, 42-43; GE 1, 4; AE B.

<sup>2</sup> Tr. at 34; Applicant's response to SOR; GE 4.

<sup>3</sup> Tr. at 23; Applicant's response to SOR; GE 4.

<sup>4</sup> Tr. at 19, 23, 25, 27, 36;-38; Applicant's response to SOR; GE 1, 2, 4; AE A.

Applicant was arrested in June 2012 and charged with domestic abuse battery. Alcohol was not involved in this incident. Applicant and his girlfriend (now wife) had an argument that turned physical. Applicant was convicted of a misdemeanor offense. He testified the domestic violence was an isolated incident and “probably precipitated by [his] alcoholism and the problems [he] faced because of the alcohol and the other financial issues, [and his] difficult transition from the [military] to civilian life.”<sup>5</sup>

Applicant testified that he only drinks “two or three beers or glasses of wine,” “about every two or three months,” and that he has cut out liquor. He and his wife married in August 2015, and they recently had their second child. He is concentrating on his work and being a good father to his two children. He testified that the security-clearance process is “almost a make or break moment. This means that [he] continue[s] [his] recovery if this goes well, or [his] recovery receives another setback.” He has not been arrested since the 2012 domestic battery charge. He assures that he has learned his lesson and that criminal offenses will not be repeated.<sup>6</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) in January 2014. He reported his 2009 and 2011 DWI cases, but he did not report his 2012 arrest and subsequent conviction for domestic abuse battery.<sup>7</sup> Applicant reported the reason that he left employment at the bar as “[q]uit for [f]amily [e]mergency.” He admitted in his background interview that the SF 86 explanation for quitting the bar was untrue and that the real reason he quit working at the bar was that he did not want to work around alcohol after his second DWI. He did not report any financial problems on the SF 86.<sup>8</sup>

Applicant had extended periods of unemployment and underemployment after he left the military and before he started employment with a defense contractor in May 2012. He was unemployed for about six weeks in 2013 when the contract changed hands. His employment issues, in conjunction with the expenses related to his criminal conduct, led to financial problems. He wrecked two cars, including the car in the second DWI, and did not pay the balances due on the car loans.<sup>9</sup>

The SOR alleges nine delinquent debts totaling about \$16,700. Applicant admitted owing all the debts at one time. He discussed his finances when he was interviewed for his background investigation in February 2014. He admitted owing most of the debts alleged in the SOR. He stated that in November 2013, he instituted a \$250

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<sup>5</sup> Tr. at 20, 43-45; Applicant’s response to SOR.

<sup>6</sup> Tr. at 19, 25-26, 33-34, 45-46; GE 4.

<sup>7</sup> The SOR did not allege that Applicant falsified the SOR. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered in gauging Applicant’s credibility, when assessing mitigation, and in the whole-person analysis.

<sup>8</sup> Tr. at 24; GE 1.

<sup>9</sup> Tr. at 22, 27, 38-39; GE 1, 4.

per month payment plan on the loan for the car he wrecked in the 2011 DWI. He stated that he considered himself to be financially stable, and that he intended to obtain a copy of his credit report and begin paying his debts one by one.<sup>10</sup>

Applicant did not maintain the loan payments on the wrecked car. Credit reports show the date of last payment as March 2014. Applicant also did not begin a systematic plan to address his debts. He established that the \$122 tax lien (SOR ¶ 1.a) was paid in May 2016. His mother cosigned the loan on the car that was totaled in his 2011 DWI. She settled the \$9,500 (alleged in SOR ¶ 1.b as \$10,250) loan for \$3,800, which was paid in May 2016. Applicant settled a \$539 debt (not alleged in SOR, but owed to same credit union as alleged in SOR ¶ 1.c) for \$350, which was paid in May 2016.<sup>11</sup>

SOR ¶¶ 1.d (\$1,614), 1.e (\$577), 1.f (\$417), and 1.g (\$378) allege medical debts. The debts are listed on the February 2014 combined credit report (SOR ¶¶ 1.d through 1.f were reported by Equifax, and 1.g was reported by Experian). The August 2015 Equifax credit report lists the debts alleged in SOR ¶¶ 1.d and 1.e, but not the debt alleged in SOR ¶ 1.f. Applicant paid \$1,203 toward three debts in May 2016. It is not completely clear which SOR debts were paid by the \$1,203, but it appears to be two or three of the four medical debts.<sup>12</sup>

The \$3,344 debt alleged in SOR ¶ 1.c is not resolved. Applicant received financial counseling in the reserves. He testified that his finances are in better shape and that he intends to pay his mother back and resolve his remaining financial issues.<sup>13</sup>

## **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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. 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.

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<sup>10</sup> Applicant's response to SOR; GE 4.

<sup>11</sup> Tr. at 27-28; Applicant's response to SOR; GE 3-5; AE C-J.

<sup>12</sup> Tr. at 29-31; Applicant's response to SOR; GE 3-5; AE I, J.

<sup>13</sup> Tr. at 28-33, 40-42; Applicant's response to SOR; GE 3-5.

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.”

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 the applicant or proven by Department Counsel.” The applicant 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 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 safeguard 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 EO 10865 provides that adverse 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 F, Financial Considerations**

The security concern 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 under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant had delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

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

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

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

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems resulted from his unemployment, underemployment, and legal problems. His legal problems were not beyond his control. Additionally, except for a six-week period when the contract changed hands, he has been steadily employed since May 2012.

When he was interviewed for his background investigation in February 2014, Applicant stated that he had a \$250 per month payment plan on the loan for the car he wrecked in the 2011 DWI and that he intended to begin paying his debts one by one. That payment plan apparently lasted only a month and he did not begin a systematic plan to address his debts. About a year after he responded to the SOR, Applicant and his mother paid or settled several debts. The Appeal Board has held that "it is proper for a Judge to consider that an applicant, aware of his debts, has undertaken to address them only after having been advised that his clearance is in jeopardy." See ISCR Case No. 11-13949 at 3 (App. Bd. Sep. 5, 2013).

Applicant's financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his judgment, reliability, and trustworthiness. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) has minimal applicability. AG ¶ 20(c) is applicable to the paid and settled debts and because Applicant received financial counseling. There are no mitigating conditions applicable to the unpaid \$3,344 debt alleged in SOR ¶ 1.c. I find that financial concerns remain despite the presence of some mitigation.

## **Guidelines G (Alcohol Consumption) and J (Criminal Conduct)**

The security concerns for alcohol consumption and criminal conduct are set out in AG ¶¶ 21 and 30:

21. *The Concern.* 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.

30. *The Concern.* 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 ¶¶ 22 and 31 describe conditions that could raise alcohol consumption and criminal conduct security concerns and may be disqualifying:

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;

22(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;

31(a) a single serious crime or multiple lesser offenses; and

31(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant's multiple alcohol-related criminal offenses and his domestic abuse conviction are sufficient to establish the above disqualifying conditions.

SOR ¶ 1.d alleges Applicant's March 2011 arrest. SOR ¶¶ 1.e and 1.f do not allege separate criminal conduct; they allege what resulted from the 2011 arrest. SOR ¶¶ 1.e and 1.f are concluded for Applicant.

AG ¶¶ 23 and 32 describe conditions that could mitigate alcohol consumption and criminal conduct security concerns. The following are potentially applicable:

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;

23(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);

23(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;

32(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; and

32(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.

Applicant's last arrest was in June 2012, and his last alcohol-related arrest was in March 2011. He completed his outpatient rehabilitation, which included group and individual therapy sessions, attendance at AA meetings, random urinalysis tests, and a curfew. He testified that he only drinks "two or three beers or glasses of wine," "about every two or three months," and that he has cut out liquor. He has stable employment.

Despite those mitigating factors, I have lingering concerns about the extent of Applicant's alcohol abuse and criminal conduct. He testified that the security-clearance process is "almost a make or break moment," and that he was worried about his recovery if he receives another setback. I am also concerned about the inconsistencies in this case, including that Applicant failed to list his 2012 arrest and subsequent conviction on his SF 86. The above mitigating factors are insufficient to dispel the alcohol consumption and criminal conduct security concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):



(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F, G, and J in my whole-person analysis.

I considered Applicant's honorable military service. I also considered his criminal record and his financial issues. Applicant presented himself well at his hearing, and I was impressed with him. My initial reaction was that despite his record, Applicant might be an acceptable candidate for a security clearance. Only when digging deeper were Applicant's inconsistencies and failed promises revealed. If my initial reaction eventually proves correct and Applicant pays his debts and refrains from further alcohol-related incidents and criminal conduct for a suitable period, he may receive a security clearance. That time may come, but it is not now.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations, alcohol consumption, and criminal conduct security concerns.

### **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:	Against Applicant
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraphs 1.e-1.f:	For Applicant
Paragraph 2, Guideline J:	Against Applicant
Subparagraphs 2.a-2.b:	Against Applicant

Paragraph 3, Guideline F:	Against Applicant
Subparagraphs 3.a-3.b:	For Applicant
Subparagraphs 3.c:	Against Applicant
Subparagraphs 3.d-3.g:	For 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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Edward W. Loughran  
Administrative Judge