



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



In the matter of: )  
 )  
 ) ISCR Case No. 14-05362  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

08/23/2016  
\_\_\_\_\_

**Decision**  
\_\_\_\_\_

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline E, personal conduct, but failed to mitigate the security concerns under Guideline G, alcohol consumption and Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On December 2, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G, alcohol consumption, F, financial considerations, and E, personal conduct. The action was taken under Executive Order 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on February 27, 2015, and requested a hearing before an administrative judge. The case was assigned to me on June 6, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 22, 2016. I convened the hearing as scheduled on July 18, 2016. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through C, which were admitted into evidence without objection. At the conclusion of the hearing the record closed.<sup>1</sup> On July 26, 2016, Applicant sent an email to DOHA, which was forwarded to me. Although the record had closed, the email was marked as AE E and admitted without objection from Department Counsel. DOHA received the hearing transcript (Tr.) on July 26, 2016.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.b, 1.d, and 2.a through 2.g. He denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 49 years old. He graduated from high school in 1986. He has never been married. He has a 24-year-old daughter. He has worked for his present employer since 2000.<sup>2</sup>

Applicant admitted he has consumed alcohol, sometimes to excess, from 1986 to 2012. He admitted he was convicted of driving under the influence of alcohol (DUI) in 2004, 2010, and 2012. He pled guilty to the charges each time, was sentenced, and was placed on one year of probation each time. After the first two convictions in 2004 and 2010, he completed a year-long substance abuse awareness program, as part of his sentence. After his third conviction in 2012, the program was six weeks long. He completed all sentences and probations. He testified that he stopped consuming alcohol sometime before his October 2015 heart bypass surgery. He testified that he stopped drinking for health reasons, and because he could not afford the legal and financial consequences of another arrest for DUI. He has never had an alcohol evaluation.<sup>3</sup>

Applicant testified that he was unaware that he had delinquent debts. He forgot who he owed or how much was owed. He did not obtain a copy of a credit report until January 2016 and does not check his credit report regularly. He testified he became aware of his delinquent debts when he talked to a government investigator during his background investigation, and the debts were brought to his attention. He did not disclose his delinquent debts on his security clearance application because he did not know what creditors he owed.<sup>4</sup> I found Applicant's testimony credible.

---

<sup>1</sup> Hearing Exhibit I is a copy of Department Counsel's discovery letter that was provided to Applicant.

<sup>2</sup> Tr. 16-19.

<sup>3</sup> Tr. 20-26, 44-46.

<sup>4</sup> Tr. 43, 47-48.

A credit report from February 2014 substantiates Applicant's delinquent debts. Applicant testified that he did not have the money to pay the debt in SOR ¶ 2.a (\$224). In July 2016 he made a payment of \$25. The debt remains unresolved.<sup>5</sup>

The debt in SOR ¶ 2.b (\$10,904) is a student loan that Applicant cosigned with his daughter. She graduated from college in 2013. She was supposed to pay the loan, but failed to do so. He understands that by cosigning the loan, he is also responsible for paying it. He spoke with the creditor a few days before his hearing, but is unable to pay the \$190 monthly payment it requested. In his post-hearing submission, he proposed to pay \$50 a month. He did not indicate if this proposal was accepted by the creditor or if he made a payment.<sup>6</sup>

The debt in SOR ¶ 2.c (\$531) is a collection account for a cell phone company. Applicant referred to it as an "old debt" that he is trying to pay. He contacted the creditor in January 2016 and offered to pay \$25 every other pay period. He provided a receipt that he paid \$25 in June 2016. He stated he had an agreement with the creditor. His post-hearing written statement indicated he would make payments in September 2016 to resolve the debt. No other evidence was provided to show additional payments.<sup>7</sup>

The debt in SOR ¶ 2.d (\$1,450) is for rent that Applicant did not pay for an apartment which he moved out of in 2008. The debt remains unpaid.<sup>8</sup>

The debt in SOR ¶ 2.e (\$1,141) is a cell phone bill that is unpaid. The debt in SOR ¶ 1.f (\$173) is for medical services he believed his insurance company paid. He has not contacted the creditor or his insurer to question or resolve the bill.<sup>9</sup>

The debt in SOR ¶ 2.g (\$52) is for car insurance that Applicant believed he had canceled, but was charged for another month. He paid this debt in March 2015.<sup>10</sup>

Applicant has not had financial counseling and does not have a budget. In his answer to the SOR, he stated he lives paycheck to paycheck. He testified he recently paid off his car loan. He also testified that his monthly \$500 child support payment stopped in 2013. Applicant's post-hearing submission is a proposal of how he intends to pay his delinquent debts in the future.<sup>11</sup>

---

<sup>5</sup> Tr. 31; AE C.

<sup>6</sup> Tr. 33-39, 55-57; AE E.

<sup>7</sup> Tr. 28-31, 46-47; AE B, E.

<sup>8</sup> Tr. 39-40.

<sup>9</sup> Tr. 40-42.

<sup>10</sup> Tr. 27-28, 42; AE A.

<sup>11</sup> Tr. 37-38, 53-54; AE E.

## 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. 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 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 not drawn 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 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 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 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.

I have considered all of the disqualifying conditions under AG ¶ 22. The following is potentially:

(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.

Applicant was convicted of DUI three times from 2004 to 2012. AG ¶ 22(a) applies.

I have considered all of the mitigating conditions under AG ¶ 23 and the following two are potentially applicable:

(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; and

(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").

Applicant credibly testified that he stopped consuming alcohol before his surgery in October 2015. His explanation for his abstinence was partially due to his health concerns, but he also stated that he could not afford to pay the associated costs of being arrested for DUI. It has been less than a year since his last consumption of alcohol. His three convictions spanned nine years. He did not begin to abstain until a couple of years after his last conviction in 2012. Not enough time has passed since he began to abstain from consuming alcohol. His behavior was not infrequent and did not happen under unique circumstances that are unlikely to recur. AG¶ 23(a) does not apply.

Applicant credibly testified that he is abstaining from consuming alcohol. He indicated he stopped consuming alcohol before his surgery, but also, part of his

explanation was because the criminal charges associated with his alcohol consumption were negatively affecting his finances. There is insufficient evidence to conclude that Applicant is aware or has acknowledged that his issues with alcohol go beyond the potential health and financial consequences, but also raise concerns about his ability to follow rules and refrain from placing others at risk when he drinks and drives. AG ¶ 23(b) partially applies.

## **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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to obtain money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>12</sup>

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has numerous delinquent debts that began accruing in 2008 and are unresolved. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following four mitigating conditions under AG ¶ 20 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

---

<sup>12</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 recently resolved one small delinquent debt and made \$25 payments on two other debts, but the remaining debts are unpaid or resolved. Applicant's debts are recent and there is insufficient evidence to conclude they occurred under unique circumstances. His failure to address his delinquent debt casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

For the application of AG ¶ 20(b), there must be proof of conditions that were beyond Applicant's control which resulted in the financial hardship, and that he acted responsibly under the circumstances. Applicant stated he was unaware of his delinquent debts, but acknowledged he cosigned his daughter's loan, and that he failed to pay rent he owed from 2008. He answered the SOR in February 2015 and was made aware of the debts prior to then, but has made minimal progress since then to resolve them. There is insufficient evidence to conclude that his financial problems were due to conditions beyond his control and that he acted responsibly. AG ¶ 20(b) does not apply.

Applicant has not received financial counseling. Despite being made aware that his delinquent debts were a security concern when he received the SOR, there are not clear indications that his financial problems are being resolved or are under control. AG ¶ 20(c) does not apply. Applicant paid the debt in SOR ¶ 2.g. AG ¶ 20(d) applies to this debt. He recently made small payments for two other debts, but has not provided sufficient evidence to conclude he has approved or established payment plans with any of the creditors. He has not made good-faith efforts to resolve the remaining debts alleged in the SOR. AG ¶ 20(d) does not apply.

### **Guideline E, Personal Conduct**

AG ¶ 15 sets out the security concern relating 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.

I have considered the disqualifying conditions under personal conduct AG ¶ 16 and the following one is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant credibly testified that he was unaware of his delinquent debts and how much he owed when he completed his SF 86. Although he acknowledged that he cosigned a student loan for his daughter, I believe that he was unaware his daughter failed to make payments on the loan, and that he became responsible for them. It was apparent that Applicant has not been aware of his financial obligations. He disclosed his past alcohol-related offenses, which are potentially more serious issues. I find he did not deliberately omit information about delinquent debts on his security clearance application. The above disqualifying condition does not apply.

### **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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.



Applicant is 49 years old and has worked for the same employer since 2000. He has three DUI convictions. Although he recently began to abstain from consuming alcohol, it is too early to conclude his alcohol problems are behind him. It is unclear that if Applicant becomes more financially stable if he will resume consuming alcohol. Applicant has numerous delinquent debts that are unresolved. Although he may have been unaware of the debts when he completed his SCA, he has been on notice since receiving his SOR that the delinquent debts were a security concern. He failed to take significant action to resolve his debts. Applicant's conduct raises serious questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the personal conduct security concern, but failed to mitigate the alcohol consumption and financial considerations 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
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.f:	Against Applicant
Subparagraph 2.g:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	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 a security clearance. Eligibility for access to classified information is denied.

---

Carol G. Ricciardello  
Administrative Judge