



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



In the matter of: )  
)  
) ISCR Case No. 14-06853  
)  
Applicant for Security Clearance )

**Appearances**

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

07/29/2016

**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 August 15, 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 September 17, 2015, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on January 4, 2016, and reassigned to me on May 4, 2016. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 20, 2016, scheduling the hearing for June 21, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on June 29, 2016.

### **Findings of Fact**

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer since October 2012. He served on active duty in the U.S. military from 2003 until he was honorably discharged in 2010. He is applying for a security clearance. He is a high school graduate with several certifications. He married in 2004 and divorced in 2010. He has two minor children.<sup>1</sup>

Applicant has a history of alcohol-related criminal offenses. He was arrested and charged with public intoxication in January 2011, twice in October 2011, and in October 2012. He admitted that he was heavily intoxicated (12 to 18 beers plus several shots) on each occasion. He also had been driving before at least two of the arrests. He pleaded guilty and paid fines for each charge.<sup>2</sup>

Applicant was arrested and charged with driving while intoxicated (DWI) in June 2011 and November 2013. He drank about 12 to 18 beers plus several shots before the first arrest and a lesser amount before the second arrest. When he was interviewed for his background investigation in January 2014, Applicant stated that he did not intend to ever drive again after drinking alcohol. He was arrested for DWI in June 2015.<sup>3</sup> He pleaded guilty to each of his DWIs. He received fines for all three DWI convictions, and he was sentenced to 160 hours of community service, three weekends in jail, and probation for ten years for the last conviction. He is not permitted to drink alcohol while on probation.<sup>4</sup>

Applicant deployed to Iraq and Afghanistan while in the military. He stated that he did not drink while in the military. He has not been diagnosed with post-traumatic stress disorder (PTSD), but he does not rule it out as a possibility. He stated that he has not had an alcoholic drink in more than a year and that he will comply with his probation and not drink alcohol. He attended a 24-week substance-abuse program after his first DWI. He received additional alcohol counseling through the Department of Veterans Affairs (VA).<sup>5</sup>

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<sup>1</sup> Tr. at 19, 27-28, 37-38; GE 1, 7.

<sup>2</sup> Tr. at 30-34; Applicant's response to SOR; GE 1-3, 7.

<sup>3</sup> The 2015 DWI was not alleged in the SOR. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered in assessing mitigation and in the whole-person analysis.

<sup>4</sup> Tr. at 16-17, 30-36; Applicant's response to SOR; GE 1-3, 7.

<sup>5</sup> Tr. at 18-22, 31-37; GE 1, 7.

Applicant has financial problems, which he attributed to his divorce and legal proceedings. He has paid tens of thousands of dollars in attorneys' fees and fines. The SOR alleges \$11,234 in back child support (SOR ¶ 1.b) and eight additional delinquent debts totaling about \$40,000. Applicant paid his child support arrearages. He admitted owing the additional debts, with the exception of the \$406 debt alleged in SOR ¶ 1.i, which he denied owing. That debt is listed on a January 2014 credit report, but not the two more recent credit reports in evidence. He has not made any payments on the remaining seven debts. He stated that he plans to pay his debts. He owes the IRS about \$500 for his 2015 taxes. He has not received financial counseling.<sup>6</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.

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

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<sup>6</sup> Tr. at 21-29, 38-40; Applicant's response to SOR; GE 1, 4-7.

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 has 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;

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

(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's financial problems resulted from his divorce and legal problems. His legal problems were not beyond his control. His child support arrearages are paid, and he successfully disputed owing the \$406 debt alleged in SOR ¶ 1.i. Those two debts are mitigated. There are no mitigating conditions applicable to his remaining delinquent debts.

### **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 are sufficient to establish the above disqualifying conditions.

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 is on probation for ten years. He stopped drinking more than a year ago. However, before his third DWI, he told the background investigator that he did not intend to ever drive again after drinking alcohol. There are no mitigating conditions sufficiently applicable to mitigate 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, particularly his two deployments to Iraq and Afghanistan. He is lucky that his out-of-control drinking did not result in his death or the death of an innocent person. Hopefully, he has pulled himself together, but he is a poor candidate for a security clearance.

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 F:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant

Paragraph 2, Guideline G:	Against Applicant
Subparagraphs 2.a-2.f:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge