



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



In the matter of:

ISCR Case No. 14-06797

Applicant for Security Clearance

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel

For Applicant: *Pro se*

09/29/2016

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concern, but not the alcohol consumption concern. Eligibility for access to classified information is denied.

Statement of the Case

On October 23, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline G, alcohol consumption. The DOD CAF acted 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on October 27, 2015. He elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the

Government's File of Relevant Material (FORM) on January 27, 2016. The FORM was mailed to Applicant who received it on February 5, 2016. As evidence, the Government offered Items 2 through 7, which were admitted without objection (Item 1 was the SOR and Applicant's answer). Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any additional evidence or enter any objections. The case was assigned to me on May 24, 2016.

Findings of Fact

In Applicant's answer (Answer) to the SOR, he denied all the Guideline F allegations, but admitted all the Guideline G allegations. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 31 years old. He is single, never married and he has no children. He has worked for his current employer since June 2010. He is a high school graduate and has taken several courses working towards a bachelor's degree.¹

Financial Considerations:

The SOR lists two collection debts and a charged-off debt. They are all consumer debts in the amounts of \$6,200; \$15,453; and \$51 (SOR ¶¶ 1.a through 1.c). These debts are supported by credit reports from March 2013 and July 2015. In his Answer, Applicant provided documentation showing that all three debts were paid or settled in 2013. These debts are resolved and there is no evidence of continuing financial problems.²

Alcohol Consumption:

Applicant's conduct raised in the SOR included: a history of consuming alcohol, at times to excess, from 2008 to at least 2013; being arrested for driving while impaired by alcohol (DWI) in April 2008 and pleading guilty to the charge in April 2010; being arrested and charged for DWI in July 2010; and being arrested for DWI in December 2012 and pleading guilty to the charge in October 2013 (See SOR ¶¶ 1.a - 1.d).³

Applicant began drinking alcohol when he was approximately 19 years old in 2008. He began drinking twice a week consuming three to four beers on most occasions. He would drink to the point of intoxication once a week. He claims he has stopped drinking alcohol since his last DWI arrest in December 2012.⁴

¹ Item 2.

² Items 1, 3-4.

³ Items 1, 5-7.

⁴ Item 7.

Court documents establish that Applicant was found guilty of two DWI offenses, in 2010 (2008 arrest) and 2013 (2012 arrest). His 2010 DWI arrest was not resolved until June 2015, as reflected in a letter from his attorney who handled his case.⁵

In October 2008, Applicant was driving home from a bar where he consumed an unknown quantity of beer. He was stopped by a police officer, given a field sobriety test, a breathalyzer test, and based upon the results, was arrested. He was found guilty and his sentence included alcohol counseling and loss of his driver's license for three months.⁶

In July 2010, Applicant was going home from a restaurant when he was stopped at a police check point. He was given a breathalyzer test that registered at .09% blood-alcohol content (BAC), which is over the legal limit. He was found guilty of driving while impaired in June 2015. His sentence included a fine, suspension of driving privileges for 90 days, successful completion of motor vehicles drinking driver program (consisting of seven weekly classes lasting two to three hours each), successful completion of a victim impact class, and no arrests for one year. The record is unclear whether these sentencing requirements were fulfilled.⁷

In December 2012, Applicant was stopped for a traffic violation. He passed the field sobriety test he was given, but refused to take a breathalyzer test. He claims he only drank one beer before driving. He pleaded guilty to DWI in October 2013 and was sentenced to supervised probation. He provided documentation showing he attended Alcoholics Anonymous (AA) classes in July 2013 (three classes), November 2013 (four classes), December 2013 (three classes), and January 2014 (three classes). He also provided evidence that he attended a two-day intervention course (Impact DUI) in July 2013. There is no evidence that he followed-up the two-day course with the 26-week or 48-week aftercare plan referred to in the Impact DUI letter. He completed the required monitoring period to have the state's ignition interlock removed from his vehicle in February 2015. No further information concerning alcohol treatment programs was provided.⁸

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.

⁵ Item 1, 5-6.

⁶ Items 1, 7.

⁷ Items 1, 7.

⁸ Items 1, 7.

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.

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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant accumulated delinquent debts over an extended period of time. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20, and the following potentially apply:

- (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;
- (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 has resolved all his delinquent debts. His efforts to repair his financial position make it reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies. There are clear indications that Applicant's debts are resolved and under control. Applicant made good-faith efforts to resolve the debts listed on the SOR. He supplied documentary evidence showing the payments were made and the debts were paid. AG ¶ 20(c) and ¶ 20(d) apply.

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. The following are potentially applicable in this case:

- (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;
- (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.

Applicant's three DWI convictions and his alcohol consumption history support the application of both disqualifying conditions.

I have also considered all of the mitigating conditions for alcohol consumption under AG ¶ 23 and found the following relevant:

- (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); 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's last adverse alcohol incident occurred in December 2012 and he completed his interlock monitoring in February 2015. His three DWI convictions are not infrequent under these circumstances. Insufficient attenuation exists to conclude enough time has passed since his last alcohol-related incident. His history of DWI arrests and convictions under similar circumstances suggest that recurrence is a possibility. His current reliability, trustworthiness, and good judgment are in doubt. AG ¶ 23(a) does not apply.

Applicant produced evidence that he attended some AA classes in late 2013 and early 2014. There is no evidence he is still attending these meetings. Applicant claims he stopped consuming alcohol in 2012. Applicant's two-day intervention course was not followed by the multi-week aftercare counseling. There was no diagnosis information provided. AG ¶¶ 23(b) and 23(d) partially 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 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 guideline 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 considered Applicant's personal circumstances. The evidence supports that he is again financially stable and that he resolved the debts. The record contains sufficient evidence to mitigate the financial security concerns, but there is insufficient evidence to mitigate the alcohol consumption concerns.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline G, alcohol consumption.

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:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a – 2.d:	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.

Robert E. Coacher
Administrative Judge