



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



In the matter of:

ISCR Case No. 15-02096

Applicant for Security Clearance

Appearances

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

For Applicant: *Pro se*

03/01/2017

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the alcohol consumption or financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 9, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption and Guideline F, financial considerations. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).

Applicant answered the SOR on January 5, 2016, and 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 March 28, 2016. The evidence

included in the FORM is identified as Items 3-8 (Items 1 and 2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on April 7, 2016. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit additional evidence, nor object to the Government's evidence. Items 3-8 are admitted into evidence without objection. The case was assigned to me on January 27, 2017.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations with explanations. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 35 years old. He is separated from his wife and has one child and a stepchild. He has worked for a defense contractor since January 2007. He obtained a General Equivalency Diploma (GED).¹

The SOR alleges that Applicant consumed alcohol to excess from about 1996 to about August 2015; received treatment at an inpatient treatment center from November to December 2010; was diagnosed as being alcohol dependent; and continued to consume alcohol after his treatment program despite his alcohol dependence diagnosis. The SOR also alleged Applicant was delinquent on seven debts totaling approximately \$18,444. The debts include a credit card collection account, a charged-off account from a voluntary car repossession, and five delinquent medical accounts. The debts are supported by credit reports from July 2012, February 2015, and September 2015, Applicant's statement to a defense investigator in October 2012, and by Applicant's SOR admissions.²

Alcohol Consumption:

Applicant began consuming alcohol to excess when he was 15 or 16 years old (1996). He began drinking on weekends with friends. He would consume approximately two to eight 12-ounce beers per occasion. He was arrested three times for being a minor in possession of alcohol.³ He had no further law enforcement contact because of alcohol issues after he turned 21 years old. In 2005, he married and stopped drinking alcohol at his wife's request. In 2010, he resumed his use of alcohol. He drank socially while out with friends. He typically drank two to three beers about two to three times per month. In November 2010, his wife demanded he enter an alcohol treatment program to

¹ Items 3, 5.

² Items 1, 3-4.

³ These arrests were not alleged in the SOR and will be used by me only as they may relate to the applicability of any mitigating conditions and an assessment of the whole-person factors.

save their marriage. Applicant took a leave of absence from work and entered a treatment program in November 2010.⁴

Applicant was given an initial assessment upon entering the treatment facility (TF). That assessment included documenting that his recent use of alcohol to intoxication pattern was seven days a week over the past 30 days. He spent \$100 on alcohol in the past 30 days. The assessment concluded that he was experiencing an “extreme problem” with his use of alcohol and determined treatment was “absolutely necessary.” The diagnostic impression given after the initial assessment included “Alcohol Dependence.” The assessment named the counselor conducting the assessment, but did not state her qualifications or licensing background. Applicant was discharged from the TF after 30 days of treatment in December 2010. His treatment was characterized as “successful.” He showed improved “refusal skills” and showed a desire to meet sober persons for interactions. He intended to live in a sober house with his wife and attend Alcoholics Anonymous (AA) meetings.⁵

In October 2015, Applicant answered interrogatories related to his current alcohol use. He admitted consuming alcohol recently (the date he gave was October 26, 2015, which post-dates when he completed the interrogatories on October 6, 2015). He also admitted drinking to intoxication as recently as mid-August 2015. He drinks to intoxication once every few months. He did not attend AA meetings and he intended to continue to drink alcohol in the future. He confirmed in his answer to the SOR that he continues to drink alcohol.⁶

Financial Considerations:

Applicant’s financial difficulties arose when he and his ex-wife overspent on items for them and their home. They bought a home and proceeded to make extensive renovations to it. They financed the renovations using credit cards. They were behind on the payments when they separated, and Applicant showed no interest in making payments once he left the house.⁷

The status of the debts is as follows:

SOR ¶ 1.a (credit card collection account \$8,312):

Applicant admitted this was an account they used to finance their home repairs. The date of last payment was November 2011. He intends to include this debt in a debt

⁴ Items 2, 5.

⁵ Items 2, 5.

⁶ Items 2, 5.

⁷ Items 2, 5.

consolidation plan. No documentation of any plan was produced. This debt is unresolved.⁸

SOR ¶ 1.b (repossession debt \$7,684):

Applicant admitted turning his car back to the dealership and setting up a payment plan to pay the delinquent balance. He failed to produce documentation supporting his assertions. The date of last payment was June 2015. Applicant failed to provide documentation showing contact with the creditor, refinancing plans, or payment. This debt is unresolved.⁹

SOR ¶¶ 1.c-1.g (medical collection accounts for \$2,047, \$266, \$244, \$54, \$48, \$33):

Applicant claims the medical center where these debts are owed is no longer in business. He did not provide supporting documentation. All debts are reported on his February 2015 credit reports as collections. He did not provide documentation showing contact with any collection service or any attempt to pay or settle these debts. These debts are unresolved.¹⁰

Applicant did not provide any information about his current financial status or a budget. There is no evidence that he sought financial counseling.¹¹

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.

⁸ Items 2, 5-8.

⁹ Items 2, 5-8.

¹⁰ Items 2, 5-7.

¹¹ Items 2, 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.” 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 EO 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.

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; 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.

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant's drinking history shows a pattern of abusing alcohol on frequent occasions. Although he has not had alcohol-related arrests as an adult, his drinking habits did cause discourse in his marriage leading to a separation. The amount and frequency of his alcohol use qualifies as binge consumption. AG ¶ 22(c) applies. Although Applicant spent 30 days in a TF and was evaluated as alcohol dependant, the qualifications of the evaluator are not in the record. AG ¶¶ 22(d) and 22(f) do not apply. However, that information is persuasive and was used by me in determining the applicability of AG ¶ 22(c).

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 still consumes alcohol on a regular basis and drinks to the point of intoxication on occasion. Despite his stated intent to remain sober and attend AA meetings after his discharge from the TF, he currently drinks on a regular basis and he does not attend AA meetings. I cannot conclude that his current use of alcohol does not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 23(a) does not apply.

Applicant continues to consume alcohol despite knowing such consumption is inconsistent with what he learned when he received treatment at the TF. AG ¶ 23(b) does not apply.

Applicant completed inpatient alcohol treatment in 2010. He resumed drinking alcohol, at times to the point of intoxication, since then. He did not present evidence of a favorable diagnosis. AG ¶ 23(d) does not apply.

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 has delinquent debts that remain unpaid or unresolved. 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;

(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 debts are recent and remain unresolved. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented no evidence that his financial difficulties were due to circumstances beyond his control. I find AG ¶ 20(b) does not apply. He failed to provide documentation showing efforts to contact the creditors, set up payment plans, or payments on the debts. There is no evidence of financial counseling. AG ¶¶ 20(c) and 20(d) do 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 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 his contractor service. Applicant continues to binge consume alcohol calling into question his reliability, trustworthiness, and good judgment, and he has not established a track record of financial stability.

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, and Guideline F, financial considerations.

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.c:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a – 2.g:	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