



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



In the matter of:

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) ISCR Case No: 15-07059  
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Applicant for Security Clearance

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel

For Applicant: *Pro se*

10/05/2017

**Decision**

DAM, Shari, Administrative Judge:

Applicant mitigated the security concerns raised under the guidelines for financial considerations and personal conduct, but not those raised under the guidelines for drug involvement and substance misuse, and alcohol consumption. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

**Statement of Case**

On April 21, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement, Guideline F, Financial Considerations, Guideline G, Alcohol Consumption, and Guideline 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 for Determining Eligibility for Access to Classified Information*, (AG) effective within the DoD after September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.<sup>1</sup>

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<sup>1</sup> I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on May 23, 2016. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2)

On July 11, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant on July 12, 2016, and received by him on July 19, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not respond to the FORM or object to Items 1 through 7; hence, they are admitted into evidence. DOHA assigned the case to me on May 22, 2017.

### **Findings of Fact**

Applicant admitted all SOR allegations. (Item 2) His admissions are incorporated into these findings of fact.

Applicant is 38 years old and divorced twice. He has worked for a defense contractor since September 2014. (Item 4)

On April 9, 2015, Applicant submitted a security clearance application (SF-86). In it he disclosed the following information: that he used and purchased marijuana with varying frequency between September 1995 to February 2015; that he tested positive for THC (marijuana) on a drug urinalysis in September 2014; that he was indebted to a company for an automobile loan in the amount of \$15,000; and that between April 1995 and January 2015, he consumed alcohol heavily because of his relationship with his girlfriend. (Item 4.)

On June 2015, a government investigator interviewed Applicant about his background and information in the SF-86. Applicant affirmed that he smoked marijuana during the times listed on his SF-86. He said he was fired from a position after he tested positive for marijuana in 2014. His family and friends are aware of his marijuana use. He was never diagnosed with a drug abuse disorder. He intended not to illegally use drugs in the future. (Item 7)

Applicant discussed his use of alcohol during the interview. He said he began consuming alcohol in high school, and sometimes to the point of intoxication. Subsequently, he began drinking heavily in 2011 while in a relationship with his girlfriend. When the relationship ended in 2014, he asked his physician to prescribe Antabuse. He took that for two months in 2014. Since then, he consumes two to four beers one or two times a week, and rarely to the point of intoxication. He previously consumed alcohol and drove, but stopped about six months ago (which would have been in approximately January 2015). He does not intend to drink and drive again. He has never been diagnosed with an alcohol problem. (Item 7) In an interrogatory, dated August 2015, Applicant noted that he consumed two cans of beer every other day and two ounces of whiskey a week. (Item 5)

In response to a question on his SF-86 inquiring about medical treatment for the use of alcohol, Applicant did not disclose that he asked his physician for the Antabuse. (Item 4.) He said he had forgotten about it when he completed the SF-86. (Item 2.)

During the interview, Applicant discussed an outstanding debt he owed for a repossessed automobile. He purchased the car for his girlfriend, and when their relationship terminated, he could no longer afford payments. According to a May 2015 credit bureau report (CBR), the balance on that delinquent debt was \$17,933. He said that if he owed that entire amount he would make payment arrangements. Other than that debt and the 2005 bankruptcy, his 2015 CBR does not list other delinquent accounts. (Item 6) In his Answer, Applicant stated that he is making payments on the debt, and listed the name of the creditor and account number. (Item 2) He did not submit documentary evidence confirming any payments.

Applicant volunteered additional financial information while being interviewed. He disclosed that he and his second wife filed a Chapter 7 bankruptcy in 2005. They discharged about \$150,000 in delinquent debts, which included an unpaid mortgage, two vehicle loans, and credit card bills. He acknowledged that they were financially immature. (Item 7).

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline H: Drug Involvement and Substance Misuse**

AG ¶ 24 describes the security concerns related to this guideline:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

AG ¶ 25 sets out conditions that could raise security concerns and may be disqualifying in this case. Three are potentially applicable:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug; and

(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant illegally purchased and used marijuana with varying frequency from 1995 to 2015. He tested positive for marijuana in 2014. The evidence raised the above disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 26 lists three conditions that could mitigate security concerns raised under this guideline:

(a) the behavior happened so long ago, was so infrequent, or happened under such 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 drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant's history of illegally purchasing and using marijuana spans from 1995 to 2015. In 2014, he participated in a drug test by his employer and tested positive for marijuana. His drug use occurred with sufficient frequency to raise ongoing concerns about Applicant's trustworthiness and judgment. The evidence does not establish mitigation under AG ¶ 26(a).

Applicant acknowledged his history of illegal drug abuse and stated that he has not used or purchased marijuana since 2015, approximately two years ago. He said he did not intend to use marijuana in the future. Given his 20-year use and purchase of marijuana, and testing positive during a job-related urinalysis, his statements are insufficient to establish mitigation under AG ¶ 26(b)(3).

There is no evidence to establish mitigation under AG ¶ 26(d). Applicant has not participated in a substance abuse treatment program, or been evaluated by a health care professional and obtained a favorable prognosis regarding his future use of illegal drugs.

## **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant's financial problems began before he filed a Chapter 7 bankruptcy in 2005. He subsequently accumulated an additional delinquent debt that remained unresolved as of June 2015. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes two conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial problems:

- (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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant acknowledged that he filed a 2005 Chapter 7 bankruptcy as a consequence of his financial immaturity. Subsequently, he accumulated a \$17,900 delinquent automobile loan that he was unable to pay after he and his girlfriend terminated their relationship in 2014. While the breakup may have been a circumstance beyond his control, he did not produce evidence demonstrating that he attempted to responsibly manage that debt after it became delinquent. During his 2015 interview, he was uncertain of the debt, but said he would resolve it. In his answer to the SOR, he stated that he is making monthly payments to the creditor. Although he did not provide documentary evidence of those payments, his assertion is credible, based on his honest disclosures of negative information in the SF-86, and the May 2015 CBR, which did not list any other delinquent debts. There is an indication that the alleged delinquent debt is being resolved or under control. The record establishes some mitigation of the financial security concerns under the provisions of AG ¶¶ 20(b), and 20(d).

### **Guideline G: Alcohol Consumption**

AG ¶ 21 sets out the security concerns 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 two conditions that could raise a security concern and may be disqualifying 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 the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

Applicant admitted that he had a serious problem with alcohol between 1995 and 2014, which lead him to seek treatment from his physician after a breakup with his girlfriend. He acknowledged that sometimes he drove under the influence of alcohol. There is sufficient evidence to raise the above disqualifying conditions.

AG ¶ 23 describes three conditions that could mitigate these security concerns raised under this guideline:

(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 judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

The evidence does not establish mitigation under AG ¶ 23(a). Based on Applicant's long history of abusing alcohol, insufficient time has passed to determine whether similar conduct will recur. AG ¶ 23(b) does not apply. Applicant admits that he had an alcohol problem, but did not provide sufficient evidence to demonstrate that he has established a pattern of abstinence or moderation since 2014 when he took Antabuse to address his alcohol problem. AG ¶ 23(d) does not apply because he has not participated in an alcohol treatment program or aftercare.

#### **Guideline E: Personal Conduct**

AG ¶ 15 explains the security concerns 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying in this case:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant does not deny that he failed to disclose that he used Antabuse in his SF-86. However, he explained that he had forgotten about it when he completed the SF-86. Given his honest disclosures in the SF-86 about his alcohol and drug usage and a delinquent debt, along with his candid answers during an interview, his explanation for

not disclosing the Antabuse is credible. The evidence fails to establish the above disqualifying condition. This guideline is found in his favor; hence a discussion of mitigating conditions is not relevant.

### **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(d):

(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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature and candid adult, who has a history of alcohol and drug abuse that raises security concerns, which remain unmitigated. While the likelihood that he will experience future financial problems appears to be minimal, there is insufficient evidence to draw the same conclusion as to future alcohol or marijuana use. Overall, the record evidence leaves me with doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He met his burden to mitigate the security concerns arising under the guidelines for financial considerations and personal conduct, but not those arising under the guidelines for drug involvement and substance misuse and 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 H:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT

Subparagraphs 2.a and 2.b:	For Applicant
Paragraph 3, Guideline G:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Paragraph 4, Guideline E:	FOR APPLICANT
Subparagraph 4.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. National security eligibility is denied.

SHARI DAM  
Administrative Judge