



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-07697  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: Gregory F. Greiner, Esq.

06/08/2017

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations and alcohol consumption security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 15, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations) and G (alcohol consumption). Applicant responded to the SOR on August 9, 2016, and requested a hearing before an administrative judge.

The case was assigned to me on December 5, 2016. After coordinating with the parties, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 17, 2017, scheduling the hearing for March 20, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A through H, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted AE I through K, which were

admitted without objection. DOHA received the hearing transcript (Tr.) on March 27, 2017.

### **Findings of Fact**

Applicant is a 38-year-old employee of a defense contractor. He served on active duty in the U.S. military from 2001 until he was honorably discharged in 2005. He served in the reserves until 2009. Except for several months of unemployment, he has consistently worked for defense contractors since his 2005 discharge, with much of that time spent working overseas. He has worked for his current employer since 2015. He attended college for a period without earning a degree. He married in 1998 and divorced in 2003. He married again in 2005 and divorced in 2009. He married his current wife in 2016. They have two minor children, and he has two stepchildren.<sup>1</sup>

Applicant has a history of alcohol-related conduct. He was charged with being a minor in possession of alcohol in about 1996. He was detained on an overseas military base in 2008 for drinking, which was prohibited. No charges were filed. He paid a fine after he was cited for public intoxication in 2012.<sup>2</sup>

Applicant was arrested in November 2014 and charged with driving under the influence. In March 2015, he pleaded guilty to the lesser charge of reckless driving. He was sentenced to a fine and ten days in jail, which was suspended conditioned on his completion of a victim-impact panel, alcohol screening, and counseling. He completed the victim-impact panel, alcohol screening, and 16 hours of substance-abuse education.<sup>3</sup>

Applicant deployed to a combat zone while he was in the military. He is rated at 40% disabled by the Department of Veterans Affairs (VA) because of his knees and post-traumatic stress disorder (PTSD). He thinks his drinking issues may have been related to his PTSD. He received treatment from the VA. He has not been arrested for anything since his 2014 arrest. He is remorseful for his actions. He has matured and enjoys spending time with his wife and two small children. They go to religious services together. He rarely drinks anymore, and then only in moderation.<sup>4</sup>

Applicant developed financial problems after his second divorce. He did not pay all his federal income taxes when they were due. He owed \$8,670 to the IRS for tax year 2012 on adjusted gross income (AGI) of \$59,731 and taxable income of \$30,670. His 2013 tax liability was \$30,394 on AGI of \$160,444, and earned income of \$132,510. He paid \$2,168 in estimated taxes in 2013, and \$5,000 was withheld from his pay by his employer. The balance owed, with penalties and interest, was about \$30,000. Applicant

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<sup>1</sup> Tr. at 13-20, 23-24, 65-66, 80; Applicant's response to SOR; GE 1-3; AE E, F.

<sup>2</sup> Tr. at 50-57, 80-88; Applicant's response to SOR; GE 3.

<sup>3</sup> Tr. at 57-58, 83; Applicant's response to SOR; GE 3, 7; AE J.

<sup>4</sup> Tr. at 16-18, 54-60, 63-64, 81-82, 88-89; Applicant's response to SOR; GE 3; AE E, F.

filed his 2013 federal tax return in April 2015. He filed his 2014 federal tax return on time. He was due a refund of \$8,802 from his 2014 taxes, which was withheld and transferred to his 2012 liability.<sup>5</sup>

Applicant established an installment agreement with the IRS in August 2015, in which he agreed to pay \$2,000 per month for his 2012 and 2013 taxes. He completed paying the 2012 taxes in October 2015, at which time the monthly payments went to the 2013 taxes. He was due a refund of \$3,259 from his 2015 taxes, which was withheld and transferred to his 2013 liability. He completed paying the 2013 taxes in December 2016. The total amount paid to the IRS since he started the installment agreement is more than \$38,000, with about \$12,000 from his refunds and more than \$26,000 in actual payments.<sup>6</sup>

Applicant's 2009 divorce decree divided the assets and liabilities, and it ordered his ex-wife to pay the credit card identified in SOR 1.d, which had a balance of \$9,661. She did not pay it. Applicant's March 2015 credit report lists the debt as an individual charged-off account, with a date of last action of November 2009 and a \$24,097 balance. The debt is not listed on the October 2016 credit report. Applicant called the creditor to inquire about the debt. He was told the debt was charged off and no longer being collected.<sup>7</sup>

The October 2016 credit report established that Applicant paid the \$235 debt alleged in SOR 1.c. He stated, without documentation, that he paid the \$1,301 debt alleged in SOR ¶ 1.a. He stated that he contacted both the collection company and the original holder of the \$112 debt alleged in SOR ¶ 1.b, and neither could confirm that he had a delinquent debt. He has an account with the original creditor that is not delinquent. The SOR ¶¶ 1.a and 1.b debts are not listed on the October 2016 credit report. Applicant paid several debts that were not alleged in the SOR. He credibly testified that he intends to file his tax returns and pay his taxes on time. His finances are now in order. He has not received financial counseling.<sup>8</sup>

Applicant submitted numerous documents and letters attesting to his excellent job performance. He is praised for his proficiency, trustworthiness, and integrity.<sup>9</sup>

### **Policies**

This case is adjudicated 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,

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<sup>5</sup> Tr. at 41-48, 74-78; Applicant's response to SOR; GE 3; AE C, D, I.

<sup>6</sup> Tr. at 75-79; Applicant's response to SOR; GE 3; AE C, D, I.

<sup>7</sup> Tr. at 31-40, 69-74, 90-92, 99-100; Applicant's response to SOR; GE 4, 5; AE B.

<sup>8</sup> Tr. at 25-31, 49-50, 66-69, 80, 93; Applicant's response to SOR; GE 4, 5; AE A.

<sup>9</sup> AE G, K.

1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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(a), 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 national security eligibility will be resolved in favor of the 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 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;

Applicant had financial problems including delinquent debts and unpaid taxes. The evidence is sufficient to raise the above 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant started resolving his tax problems in August 2015, with an installment agreement in which he agreed to pay \$2,000 per month for his 2012 and 2013 taxes. He completed paying the back taxes in December 2016. The total amount paid to the IRS since he started the installment agreement is more than \$38,000, with about \$12,000 from his refunds and more than \$26,000 in actual payments. His 2014 and 2015 tax returns were completed on time. His 2009 divorce decree ordered his ex-wife to pay the credit card identified in SOR 1.d. Applicant called the creditor to inquire about the debt. He was told the debt was charged off and no longer being collected. He paid other debts. I am satisfied that Applicant's finances are in order. Financial concerns are mitigated.

### **Guideline G, Alcohol Consumption**

The security concern for alcohol consumption is set out in AG ¶ 21:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. 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 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 had four alcohol-related incidents, including a DUI. AG §§ 22(a) and 22(c) are applicable.

Conditions that could mitigate alcohol consumption security concerns are provided under AG § 23. The following 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 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.

Applicant's DUI was more than two years ago. He completed the court-ordered requirements, which included counseling. He is remorseful for his actions, and he currently drinks responsibly. He has matured and enjoys spending time with his wife and two small children.

I find that Applicant has established a pattern of modified consumption, and that uncontrolled drinking is unlikely to recur. His alcohol-related conduct no longer casts doubt on his reliability, trustworthiness, and good judgment. AG §§ 23(a) and 23(b) are applicable.

### **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.

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 and G in my whole-person analysis.

I considered Applicant's favorable character evidence and his honorable military service. His tax issues are resolved; his current finances are sound; and he is drinking responsibly.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations and alcohol consumption 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:	For Applicant
Subparagraphs 1.a-1.e:	For Applicant
Paragraph 2, Guideline G:	For Applicant
Subparagraphs 2.a-2.d:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge