



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03618

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: Gregory F. Greiner, Esq.

02/26/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant established that circumstances beyond his control contributed to his recent financial problems and that he was responsible under the circumstances. His financial problems are being resolved and are under control. His criminal behavior was related to his alcohol problem. There is no evidence of any criminal misconduct or alcohol-related incidents after 2011. He has made permanent lifestyle changes and has been abstinent since 2015. Alcohol consumption, criminal conduct, and financial considerations security concerns are mitigated. Clearance granted.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on December 28, 2012. He was interviewed by government investigators on January 29, 2013. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on January 14, 2016, alleging security concerns under Guidelines G (alcohol consumption), J (criminal conduct), and F (financial considerations). Applicant answered the SOR on January 27, 2016, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The Government amended the SOR, adding 22 Guideline F allegations (3.j through 3.ee), on August 19, 2016. Applicant answered the new allegations on September 26, 2016. The case was assigned to me on February 24, 2017. The DOHA issued a notice of hearing on March 16, 2017, scheduling a hearing for April 17, 2017. At the hearing, the Government offered 16 exhibits (GE 1 through 16). GE 16, a demonstrative exhibit, was marked and made part of the record, but it is not evidence. Applicant testified and submitted exhibits (AE) A and B. AE A is comprised of Tabs A through U. I received AE U post-hearing. All exhibits were admitted as evidence without objection, except for GE 16. DOHA received the hearing transcript (Tr.) on April 25, 2017.

Findings of Fact

Applicant admitted SOR allegations ¶¶ 1.a, 1.c, 1.e, 2.a through 2.c, 3.c through 3.g, and 3.i. He admitted in part, and denied in part, SOR allegations ¶¶ 1.d and 2.d. He denied SOR allegations ¶¶ 1.b, 3.a, 3.b, 3.h, and 3.j through 3.ee. His admissions to the SOR allegations and at his hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 42-year-old employee of a federal contractor. He graduated from high school and enlisted in the U.S. Navy in 1993. He served on active duty between June 1993 and December 1999, when he was honorably discharged. (Tr. 26) While in the service, Applicant held a secret clearance granted to him in about 1993. He renewed his clearance eligibility in 2005 and 2010. Applicant never married and he has no children. Through the years, he has completed some college credits, but they are insufficient for a degree.

There is no information about Applicant's occupation between his Navy discharge in December 1999 and his first reported employment in September 2002. He was employed or self-employed between September 2002 and July 2009. He was unemployed between July 2009 and December 2009. A federal contractor hired Applicant in January 2010, and he has been working for federal contractors thereafter. His current employer hired him for a full-time position in September 2016. Applicant has been working for the same employer and clearance sponsor since. Most of his work for federal contractors involved Applicant providing services to U.S. personnel deployed to dangerous locations in the Middle East. The technical skills he learned in the Navy have made him a valuable employee for many federal contractors.

Between 2000 and 2011, Applicant was involved in alcohol-related and criminal conduct incidents that required law enforcement intervention as follows:

1. In about January 2000, Applicant was found guilty of being drunk in public. He was sentenced to pay a fine.

2. In June 2000, Applicant was found guilty of assault by battery. He was sentenced to 30 days in jail, suspended, and paid a fine.

3. In December 2000, Applicant was charged with driving under the influence (DUI) and resisting arrest. Pursuant to a guilty plea, the DUI charge was dismissed, and he was found guilty of resisting arrest. He was sentenced to 10 days in jail, 8 days suspended.

4. In May 2003, Applicant operated a vehicle with a suspended driver's license. He failed to appear in court and was arrested. In August 2003, he pleaded *nolo contendere* and the adjudication was suspended pending payment of a fine. Applicant failed to pay the fine. In September 2005, he was convicted of contempt of court and fined.

5. In about April 2004, Applicant was involved in a road-rage incident. He pulled over a younger driver, and during an argument, took the driver's phone and threw it in a lake. Applicant consumed alcoholic beverages prior to the incident. He was charged with impersonating a police officer, false imprisonment, and theft. At the time, Applicant was in the process of moving to another state and failed to appear in court. In July 2010, Applicant entered a plea of *nolo contendere* and was sentenced to one day in jail with credit for one day served, to pay a fine, to make restitution, and was placed on 36 months' probation.

6. In September 2010, Applicant drove while under the influence of alcohol and was involved in a fight with a friend and coworker. He was charged with DUI and assault consummated by battery. He paid a fine for the offenses. At the time, he was in transit through a European country waiting to be deployed to the Middle East. Because of the above incident, his interim clearance was suspended, he missed his deployment and had to return to the United States.

7. In January 2011, Applicant was convicted of extreme DUI (.20 or higher BAC) and fined \$4,360.

Applicant successfully attended substance abuse and anger management counseling after his 2011 DUI conviction. He also voluntarily attended Alcohol Anonymous (AA) for a period. As of his hearing, Applicant was no longer attending AA. He explained that the AA program worked well for him and he gives the program credit for his current abstinence and success. However, he claimed he was getting depressed attending AA meetings and listening to other people's problems. He also noted he had a long commute after work that made attending the meetings difficult.

Although he has not been diagnosed with an alcohol condition, Applicant acknowledged he has an alcohol problem and that all of his criminal offenses are related to his alcohol consumption and anger management. Applicant testified that after his 2011 DUI conviction, he has not driven a vehicle after consuming alcohol. He consumed alcohol in moderation between 2011 and 2015. He has abstained from alcohol consumption since 2015. There is no evidence of any alcohol-related incidents or run-ins with law enforcement after 2011.

Applicant made life-style changes to avoid consuming alcohol. In addition to attending AA meetings for some time, he attends church, and retained the services of a life-coach (certified therapist) who has been providing him counseling and guidance on alternative methods of dealing with stress. Applicant recently purchased a home and is renovating it. He also established a small business that he is growing. Applicant believes he has surrounded himself with good people who have helped him overcome his alcoholism (he is a self-described alcoholic). He is a “big brother” to two kids, and his boss (also a recovering alcoholic) has been counseling, supporting, and assisting Applicant to remain sober. Applicant understands how alcohol abuse affected him negatively, and credibly testified he does not want to repeat that cycle anymore.

While in the Navy, Applicant was exposed to excessive radiation. He developed cancer, and was operated on in 2003. The operation affected some nerves, and he is in the process of applying for disability from the U.S. Department of Veterans Affairs (VA).

Applicant attributed his financial problems, in part, to his line of work, and in part to his financial irresponsibility when he was suffering from his alcohol problem. He has worked for federal contractors, mostly at overseas assignments, between 2009 and 2015. He was always moving from place to place, which created increased living expenses, and the distance and lack of communications from his deployment sites and the United States made it difficult for him to keep in contact with his creditors, mail, and abreast of his finances. He noted that he was unemployed between July 2009 and December 2009, and worked part time between November 2011 and May 2012. Additionally, he lost a job when his employer moved overseas, and suffered extensive financial hardship when he relocated to another state.

Applicant explained that he was offered a GS-9 permanent position in another state and given a reporting date in 2013. He was told by the Civilian Personnel Office to relocate at his own expense and then claim for reimbursement. He extinguished his financial resources in the move. When he arrive at the state, the 2013 sequestration and hiring freeze took effect. He could not be hired for his federal position, he was not able to find employment in the local economy, and he was unemployed for a period. When he was hired for his federal position, he was told he had to go on furlough for an additional period. He could not afford the time without pay and resigned his position to look for another job. Applicant had difficulty finding a good paying job in the local economy, and he had financial difficulties until 2015, when he moved back to the state in the mainland where he currently resides.

The SOR alleges 31 delinquent or in collection accounts. Applicant's documentary evidence shows that he paid or resolved 19 accounts (SOR ¶¶ 3.b through 3.h, 3.j (same as 3.b), 3.l (same as 3h), 3.n, 3.p through 3.s, 3.w, 3.aa, 3.bb, and 3.ee.

Concerning the account alleged in SOR ¶ 3.a, Applicant claimed he established a repayment plan with the creditor. He did not present documentary evidence to support

his claim. He also claimed that he had paid all the remaining SOR accounts (§§ 3.i, 3.m, 3.o, 3.t to 3.v, 3.x to 3.z, 3.cc and 3.dd). He did not present documentary evidence to support his claims. Concerning the account alleged in SOR § 3.k, Applicant testified that he did not recognize the creditor, and that the credit reports provided insufficient information to identify the original creditor.

Applicant repeatedly testified that the only debt he had not paid, but had a payment arrangement for, was the account alleged in SOR § 3.a. I note that Applicant paid many of the older SOR debts before the SOR was issued. Applicant's 2017 credit report (most recent) shows a total of 19 trade lines (accounts): 18 accounts were noted as "pays account as agreed" and only the account alleged in SOR § 3.a was noted as delinquent and charged off. There are no other delinquent or collection accounts. He has not incurred any new delinquent debt. (GE 8 and 9)

Applicant believes he has been doing his best to repair his finances. With his sobriety, living in a state with a normal cost of living, and his job he finds it easy to manage his financial responsibilities. Applicant's financial situation is stable and he noted that he pays all of his current bills on time. He believes that most of his financial problems involved situations beyond his control. He promised to continue to live within his financial means and to pay all his debts in full and on time.

Policies

The SOR was issued 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

While the case was pending a decision, the Director of National Intelligence implemented Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017, which replaced the 2006 AG, and are applicable to all adjudicative decisions issued on or after June 8, 2017. I decided this case under the current AGs implemented by SEAD 4.

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, § 2. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to

classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Alcohol Consumption

AG ¶ 21 articulates the security concern about 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.

Between 2000 and 2011, Applicant was involved in five alcohol-related incidents that resulted in law enforcement intervention. AG ¶ 22 provides two disqualifying 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.

The record established the above disqualifying condition, requiring additional inquiry about the possible applicability of three mitigating conditions under AG ¶ 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 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 Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

All of the above mitigating conditions apply. The four alcohol-related incidents happened between 2000 and 2011. There is no additional evidence of any alcohol-related incidents or issues of concern after 2011. It has been close to eight years since Applicant's last alcohol-related incident. He consumed alcohol responsibly and in moderation between 2011 and 2015. He has been abstinent after 2015.

Guideline J, Criminal Conduct

Under Guideline J, the concern is that 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 ¶ 30.

Under Guideline J, the SOR cross-alleged the same alcohol-related behavior alleged under Guideline G (Applicant's involvement in five alcohol-related incidents that resulted in law enforcement intervention between 2000 and 2011). Additionally, it alleged a June 2000 conviction for simple assault; 2003 convictions for operating a vehicle while driver's license suspended and contempt of court; and a September 2010 arrest and charge for assault by battery (related to SOR ¶ 1.b).

Applicant's criminal behavior raises security concerns under AG ¶ 31:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

AG ¶ 32 lists two conditions that could mitigate the criminal conduct security concerns raised under AG ¶ 31:

(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

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

All the above mitigating conditions apply. Applicant's criminal conduct happened between 2000 and 2011. Applicant's criminal behavior was related to his alcohol problem. There is no additional evidence of any criminal misconduct, or alcohol-related incidents, or any issues of concern after 2011. It has been close to eight years since Applicant's last criminal conduct or alcohol-related incident. There is no evidence of any additional questionable behavior.

Applicant consumed alcohol in moderation between 2011 and 2015. He has been abstinent since 2015. He understands the adverse consequences of his alcohol abuse, and he is dedicated to remain sober. Applicant made life-style changes to avoid alcohol consumption. He attends church and retained the services of a certified therapist to help him overcome the triggers that led him to consume alcohol. Applicant recently purchased a home and is renovating it. He also established a small business and is growing it. Applicant has surrounded himself with people, including his current boss, who have helped him overcome his alcoholism (he is a self-described alcoholic). Applicant understands how alcohol affected him negatively and credibly testified he does not want to repeat that cycle anymore.

Applicant was remorseful about his alcohol-related behavior and resulting criminal conduct. He promised to stay away from bad influences. It appears he has learned a hard lesson from his past mistakes. Applicant is fully aware that for him to be eligible for a clearance and his job with a federal contractor, he will be required to demonstrate his trustworthiness, character, honesty, and good judgment. Any future criminal behavior or alcohol-related misconduct will destroy the trust placed upon him by the Government and show that he is unreliable, untrustworthy, and lacks judgment.

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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. 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.

Applicant's history of financial problems is documented in the record. He had a history of financial problems that dates back to about 2010. AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." The record established the disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving 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; 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 early financial problems were likely caused by his alcohol problem and financial irresponsibility. However, his current financial problems could be better attributed to, or were aggravated by, circumstances beyond his control – his overseas assignments (between 2009 and 2015) with frequent relocations that created additional living expenses, his periods of unemployment and underemployment due to cancer treatment, the 2013 furlough, and his inability to find full-time employment in a high cost of living state.

Applicant still has at least one unresolved delinquent debt. Thus, his financial problems are ongoing and recent. Notwithstanding, considering the evidence as a whole, it shows that Applicant is now financially responsible, and his financial problems are being resolved or are under control. Applicant has made permanent and significant lifestyle changes that show his financial problems are unlikely to recur.

The analysis of whether Applicant acted responsibly under the circumstances is not difficult considering the evidence as a whole. Many of the older SOR debts were paid before the SOR was issued. Applicant's 2017 credit report (most recent) shows he had a total of 19 trade lines (accounts): 18 accounts were noted as "pays account as agreed" and only the account alleged in SOR ¶ 3.a was noted as delinquent and charged off. There is no evidence of any additional delinquent or collection accounts. He has not incurred any new delinquent debt. (GE 8 and 9) Applicant acted responsibly under the circumstances by paying those debts he could afford to pay.

Applicant repeatedly testified that the only unpaid debt he has is the account alleged in SOR ¶ 3.a, but he averred it was in a payment arrangement. His recent history of paying his delinquent debts and his current credit reports give credence to his testimony. Applicant's financial situation is stable and he is paying his current bills on time. He promised to continue to live within his financial means and to pay all his debts in full and on time. I find that there are clear indications that his financial problem is being resolved and is under control.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a), 2(d) and 2(f). I have incorporated my comments under Guideline F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant is a 42-year-old employee of a federal contractor. He honorably served six years in the Navy. He has worked for federal contractors since 2009. During his service, he held a clearance without any issues or concerns. Circumstances beyond his control contributed to or aggravated his recent financial problems. The record evidence is sufficient to establish that he was financially responsible under the circumstances and that his financial problems are being resolved or are under control. The AG do not require an Applicant to immediately resolve or pay each and every debt alleged in the SOR, to be debt free, or to resolve first the debts alleged in the SOR. An Applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan.

Because of Applicant's years in the service and working for federal contractors while holding a clearance, Applicant is aware that he has to maintain financial responsibility to be eligible for a clearance. I believe that Applicant will continue to resolve his financial problems. The alcohol consumption, criminal conduct, and financial considerations security concerns are mitigated.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.e:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a - 2.d:	For Applicant

Paragraph 3, Guideline F:

FOR APPLICANT

Subparagraphs 3.a - 3.ee:

For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge