



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



In the matter of:

ISCR Case No. 15-07673

Applicant for Security Clearance

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: Leon Schachter, Esq.

November 20, 2017

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On June 9, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F, J, and G.<sup>1</sup> The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR (Answer) on July 7, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on August 17, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 14, 2016, scheduling the hearing for November 9, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 8. GX 1

---

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

through GX 8 were admitted without objection. Applicant testified on his own behalf, as did his fiancée. Applicant presented nine documents, which I marked Applicant's Exhibits (AppXs) A through I. AppX A through AppX I were admitted without objection. The record was left open until February 12, 2017, for receipt of additional documentation. On December 8, 2016, Applicant presented AppX J, which was admitted without objection. However, there was some confusion regarding additional time for the submission of additional AppXs. Applicant filed an unnecessary motion asking for an additional 30 days to submit additional documentation. That motion was not addressed by the undersigned until after February 12, 2017. In an abundance of caution, the record was left open until September 29, 2017, for the receipt of additional documentation. Nothing further was submitted by Applicant. DOHA received the transcript of the hearing (TR) on November 18, 2016. The record was closed on September 29, 2017.

### **Findings of Fact**

Applicant denied the allegations in SOR ¶¶ 1.b. through 1.n., but admitted SOR ¶¶ 1.a., 2.a.-2.d, and 3.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 39-year-old employee of a defense contractor. (GX 1 at page 5.) He has been employed with the defense contractor for over five years. (GX 1 at page 10.)

### **Guideline J – Criminal Conduct & Guideline G – Alcohol Consumption**

2.a. and 3.a. In July of 2005, Applicant was arrested for, and subsequently convicted of, Driving Under the Influence (DUI). (TR at page 56 lines 4-6, and GX 7.) He was sentenced to summary probation for 36 months, fined \$1,525, and required to participate in an alcohol educational program. (*Id.*)

2.b. In October of 2006, Applicant was arrested for, and subsequently convicted of, Driving on a Suspended License. (TR at page 56 line 7 to page 58 line 4.) He was sentenced to summary probation for 24 months, and fined \$786.

2.c. and 3.a. In July of 2008, Applicant was arrested for, and subsequently convicted of, a second DUI. (TR at page 58 line 5 to page 59 line 5, and GX 7.) He was sentenced to summary probation for 60 months, fined \$2,049, and directed to enroll in a multiple offender drinking driver program. (*Id.*)

2.d. and 3.a. In January of 2013, Applicant was arrested for, and subsequently convicted of, a third DUI. (TR at page 34 line 22 to page 36 line 1, at page 59 line 6 to page 60 line 11, and GX 8.) He was sentenced to probation for five years, fined, and directed to participate in an alcohol behavior class. (*Id.*)

Since September of 2015, Applicant has received "treatment for help with anxiety, which manifested with self-doubts, ruminations, and difficulty falling asleep."

(AppX I at page 1.) His psychiatrist “also supported his [Applicant’s] ongoing attendance at AA [Alcoholics Anonymous] meetings,” and further notes, “He has attended AA meetings but not regularly, but he [Applicant] has been very proud of maintaining his sobriety and completing the court mandated requirements.” (AppX I.) Applicant still consumes alcohol, but he describes his usage as “Sporadic.” (TR at page 38 line 11 to page 43 line 23.)

## **Guideline F – Financial Considerations**

1.a. Applicant admits that he had a past-due debt to Creditor A, as the result of “an auto loan,” in the amount of about \$10,035. (Answer at page 2.) However, he avers that he “fully settled this debt.” (*Id.*) In an Affidavit, Applicant further avers that the “Account representatives were unable to locate the debt and could not find an account under . . . [Applicant’s] name.” (AppX J at page 1.) This is corroborated by the Government’s most recent August 2016 credit report. (GX 6.) This allegation is found for Applicant.

1.b. Applicant denies that he has a past-due debt to Creditor B in the amount of about \$2,881. Furthermore, he has submitted documentation from the successor creditor of this debt that it has been paid. (AppX F.) This allegation is found for Applicant.

1.c. and 1.f. These appear to be one and the same debt to Creditor C ranging from about \$5,600–\$8,600. (AppX J at page 1.) Applicant is making a monthly payment of \$376 towards this past-due debt, as evidenced by a document from Applicant’s credit card account. (AppX J at page 5.) I find that Applicant is making a good-faith effort to address this debt; and as such, these allegations are found for Applicant.

1.d. Applicant denies that he has a past-due debt to Creditor D in the amount of about \$16,578. In his affidavit, Applicant avers that he “Contacted” the alleged creditor, and, “They have no record of . . . [Applicant] in their system or of . . . [Applicant] ever having a (sic) account with” Creditor D. (AppX J at page 1.) This is corroborated by the Government’s most recent August 2016 credit report. (GX 6.) This allegation is found for Applicant.

1.e. Applicant denies that he has a past-due debt to Creditor E in the amount of about \$298. In his affidavit, Applicant avers that he “settled” this debt, and that he “Will provide [a] debt satisfaction letter in 14 days from 12/6/16. (AppX J at page 1.) I find that Applicant is making a good-faith effort to address this small debt; and as such, this allegation is found for Applicant.

Subparagraph 1.f. has already been discussed, above.

1.g. Applicant denies that he has a past-due debt to Creditor G in the amount of about \$220. In his affidavit, Applicant avers that the “Debt was settled for \$134.71,” and he has corroborated this averment with a document from Applicant’s credit card account. (AppX J at pages 1 and 6.) This allegation is found for Applicant.

1.h. Applicant denies that he has a past-due debt to Creditor H in the amount of about \$1,398. In his affidavit, Applicant avers that the “Debt was settled for \$850.00,” and has corroborated this averment with a document from Applicant’s credit card account. (AppX J at pages 1 and 7.) This allegation is found for Applicant.

1.i. Applicant denies that he has a past-due debt to Creditor I in the amount of about \$169. In his affidavit, Applicant avers that the “Debt was paid,” and has corroborated this averment by a document from Applicant’s credit card account. (AppX J at pages 2 and 8.) This allegation is found for Applicant.

1.j. Applicant denies that he has a past-due debt to Creditor J in the amount of about \$2,919. In his affidavit, Applicant avers that the “Debt was settled for \$1,744,” and has corroborated this averment by a document from Applicant’s credit card account, and by a letter from the successor creditor to this debt. (AppX J at pages 2, 9 and 18.) This allegation is found for Applicant.

1.k. Applicant denies that he has a past-due debt to Creditor K in the amount of about \$554. In his affidavit, Applicant avers that the “Debt was settled for \$376.38,” and has corroborated this averment by a document from Applicant’s credit card account. (AppX J at pages 2 and 10.) This allegation is found for Applicant.

1.l. Applicant denies that he has a past-due debt to Creditor L in the amount of about \$709. In his affidavit, Applicant avers that the “Debt was settled for \$348.00,” and has corroborated this averment by a document from Applicant’s checking account. (AppX J at pages 2 and 11.) This allegation is found for Applicant.

1.m. Applicant denies that he has a past-due debt to Creditor M in the amount of about \$10,255. In his affidavit, Applicant avers that a “1099C was issued for the debt,” and that he “will include this” in his income tax filing. Applicant corroborated this averment with a copy of his “Form 1099-C”. (AppX J, at pages 2 and the last page.) This allegation is found for Applicant.

1.n. Applicant denies that he failed to file his Federal and state income tax returns for tax years 2007 and 2010. He has corroborated his averment by tax documents showing his filings. (AppX B.) This allegation is found for Applicant.

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 AG ¶ 2 describing 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

Section 7 of Executive Order (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 J - Criminal Conduct**

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. One condition applies, as discussed below:

(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.

Applicant has been convicted of three DUIs and for driving with a suspended license. These convictions stretch from July of 2005 to January of 2013. This evidence raises security concerns under these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 32 contains four conditions that could mitigate criminal conduct security concerns:

(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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; 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.

Sufficient time has not passed since Applicant's most recent DUI, given the fact that he was previously convicted of two DUIs and driving with a suspended license between 2005 and 2013. Furthermore, Applicant is still on probation as a result of his most recent conviction. Based on those facts, the evidence continues to cast doubt on Applicant's reliability, trustworthiness, and good judgment. The evidence does not establish mitigation under any of the above conditions.

### **Guideline G - Alcohol Consumption**

The security concern relating to the guideline 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 at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying in this case. One condition may apply:

(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.

Applicant was convicted of DUIs in 2005, in 2008 and in 2013. This evidence raises the above security concern, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate that concern.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Three conditions may apply:

(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.

Applicant's history of alcohol-related arrests is troublesome. His three alcohol-related DUIs, coupled with his admitted continuing sporadic consumption of the intoxicant, continues to cast doubt on his trustworthiness. None of the above mitigating conditions apply.

## **Guideline F - Financial Considerations**

The security concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

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

Applicant had significant past-due indebtedness. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides seven conditions that could mitigate security concerns. Five may 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, 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, 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 has made a good-faith effort to address all of the alleged delinquencies. He has demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(d) has been established.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security 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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines J, G, and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant's long criminal history, and his history of problematic alcohol consumption leave me with questions and doubts as to his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the criminal conduct, and alcohol consumption security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a. through 1.n.:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a. through 2.d. :	Against Applicant

Paragraph 3, Guideline G:

AGAINST APPLICANT

Subparagraph 3.a.:

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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Richard A. Cefola  
Administrative Judge