



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



In the matter of:

ISCR Case No. 15-07879

Applicant for Security Clearance

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel

For Applicant: *Pro se*

October 31, 2017

**Decision**

Lokey Anderson, Darlene D., Administrative Judge:

On July 31, 2014, Applicant submitted a security clearance application (SF-86). On September 19, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations, Guideline G, Alcohol Consumption and Guideline E, Personal Conduct. (Item 1.) The action was taken 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, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on October 13, 2016. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On November 16, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 11 Items, was mailed to Applicant on November 21, 2016, and received by him on December 2, 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 failed to respond to the FORM. Applicant did not object to Items 1 through 11, and they are admitted into evidence.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

### **Findings of Fact**

Applicant is 46 years old. He is divorced with two grown children. He has some college and is employed with a defense contractor as an electronics technician. Applicant is a veteran, and served in the Air National Guard from May 1991 to November 2012. He is applying for a security clearance in connection with his employment.

### **Guideline F - Financial Considerations**

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR identified four debts totaling approximately \$1,500, and he failed to file both state and Federal taxes from 2009 through 2012. Applicant admits to each of the allegations set forth under this guideline in the SOR.

Credit Reports of Applicant dated April 29, 2008; August 29, 2014; August 11, 2016; and August 22, 2016, confirm the indebtedness listed in the SOR. (Government Exhibits 6, 7, 8 and 9.) Applicant began working for his current employer in 1996.

He states that he was going through a divorce when he incurred the delinquent debts and failed to file his Federal and state income tax returns. During his interview in June 2015, Applicant stated that he was in contact with the taxing authorities and intended to file all of his past-due income tax returns in July 2015. In his answer to the SOR, Applicant explained that he had difficulty paying his existing bills while also trying to pay child support of \$500 per child, two times a month, as well as spousal support. He states that he has now made the appropriate financial adjustments, and is trying to pay off his debts and his delinquent taxes. (Government Exhibit 1.)

1(a) Applicant failed to file his Federal and state income taxes as required for tax years 2009, 2010, 2011, and 2012. There is no evidence in the record indicating that Applicant has filed any of the tax returns in question.

The following debts became owing and remain outstanding:

1(b) A delinquent account was placed for collection in the approximate amount of \$834. The account remains owing. (Answer to SOR.)

1(c) A delinquent account was placed for collection in the approximate amount of \$143. The account remains owing. (Answer to SOR.)

1(d) A delinquent account was placed for collection the approximate amount of \$323. The account remains owing. (Answer to SOR.)

1(e) A delinquent account was placed for collection in the approximate amount of \$26. The account remains owing. (Answer to SOR.)

There is no evidence in the record, including documentation, to show how Applicant incurred these debts, what if any financial arrangements have been made with any of his creditors, or if he has paid off any of his debts. It is unknown if Applicant engaged in irresponsible spending, or if he simply did not earn enough money to cover his necessary living expenses. There is also no real explanation as to why he did not file his Federal and state income taxes for tax years 2009, 2010, 2011, and 2012. Thus, each of the debts listed in the SOR continue to remain delinquent and owing. Additional documentation relating to any debt repayments plan with his creditors, his current financial state of affairs, as well as any budgets in place, could have been helpful to show that some effort had been made. The record is void of mitigation.

### **Guideline G – Alcohol Consumption**

Applicant also admits to a history of alcohol abuse, that includes two criminal convictions for Driving Under the Influence of Alcohol. Following his second DUI, he was diagnosed as alcohol dependent.

Applicant began using alcohol at the young age of fifteen. He usually drank four beers per setting, three times a week with friends at social gatherings. Alcohol makes him feel relaxed, and he believes that it takes about ten beers before he becomes intoxicated. This pattern of drinking has continued over the years. (Government Exhibit 5.)

In February 2009, Applicant was arrested for Driving Under the Influence. He pled no contest and was found guilty. Four years later, in September 2013, he was arrested and charged with Operating a Vehicle Under the Influence of an Intoxicant (OVUII) and Reckless Driving. (Government Exhibit 10.) Applicant was attending a

social function and had consumed between 10 and 12 beers over the course of five hours. Applicant felt safe to drive. An off-duty police officer reported the Applicant's vehicle swerving. The police officer who pulled Applicant over smelled alcohol on Applicant's breath, and administered a Breathalyzer exam, which Applicant failed. Applicant later appeared in court, pled no contest, and was found guilty. He was fined \$962, and mandated to complete 240 hours of community service and to complete a 12-week alcohol counseling class. It was following this arrest when Applicant was diagnosed with alcohol dependence. Applicant states that since his diagnosis in 2013, he has gone to counseling and has reduced the amount of alcohol he normally consumes. He states that he rarely if ever now consumes alcohol. He states that he does not drink anything harder than a beer or two, and he does not go out as much as he used to. (Government Exhibit 1.)

### **Guideline E – Personal Conduct**

Applicant admits that he made serious errors in judgment with his two arrests and convictions for Driving Under the Influence in 2009, and again in 2013. He states that he has now paid all of the fines imposed against him and has completed all of the other court-mandated conditions. (Government Exhibit 1.)

In March 2014, Applicant was charged with Criminal Contempt of Court for disobeying a court mandate. Applicant failed to complete the 240 hours of community service mandated by the court, as a result of his arrest and conviction in 2013. Applicant appeared in court, and pled guilty to the offense. Applicant was fined \$330 and placed on probation for one year. Upon completion of the terms and conditions imposed by the court, Applicant received a letter indicating that the charges against him were dismissed. (Government Exhibit 11.)

### **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 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 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 access to national security eligibility will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information 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 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 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 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. Four 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 is indebted to the creditors listed in the SOR. He has failed to prove that he has done anything to resolve the debts, or that he has filed the income tax returns in question. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(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.

(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 states that he has now adjusted his living expenses and is working to pay off his delinquent debts and taxes. There is no documentary evidence in the record to prove any of these contentions. Under the particular circumstances here, Applicant has failed to establish that he acted reasonably or responsibly with respect to his debts. Accordingly it is found that his debts all remain owing and that his tax returns in question have not been filed. Applicant has not demonstrated that future financial problems are unlikely. There are no indications that his financial problems are being resolved or are under control.

## **Guideline F – Alcohol Consumption**

The security concern relating to the guideline for Financial Considerations 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. Three 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;

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

(d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder.

AG ¶ 23 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 23, however none of them are applicable. Despite the fact that Applicant was diagnosed as alcohol dependent, he continues to drink alcohol. There is no evidence in the record to demonstrate that he has stopped drinking. He states that he has reduced his drinking, but provides nothing more to substantiate this averment.

## **Guideline E - Personal Conduct**

The security concern for the personal conduct guideline is set out in AG ¶ 15:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(3) a pattern of dishonesty or rule violation.

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulate or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities, which, if known, could affect the person's personal, professional, professional, or community standing.

Applicant's two convictions for DUI and his contempt of court conviction show poor judgment and unreliability. Applicant's alcohol abuse, debt, and failure to follow tax laws also show an unwillingness to comply with rules and regulation and serious errors in his judgment.

### **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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F, Guideline G, and Guideline E, in my whole-person analysis. Applicant has



has not shown that he is responsible concerning his debts, his alcohol abuse and his personal conduct. He has provided no information concerning the debts, the alcohol abuse, his failure to file his taxes or his personal conduct that demonstrates appropriate mitigation. Moreover, Applicant has not demonstrated that he is responsible.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations, the Alcohol Consumption, and the Personal Conduct 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	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.

Darlene Lokey Anderson  
Administrative Judge