



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)
)

ISCR Case No. 16-00479

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

03/28/2018

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant failed to mitigate the security concerns regarding his drug involvement and substance misuse, alcohol consumption, financial considerations, and personal conduct. Eligibility for access to classified information is denied.

Statement of Case

On March 23, 2017, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 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 (December 29, 2005) (AGs).

The Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs). They apply to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. Procedures for administrative due process for contractor personnel continue to be governed by DOD Directive 5220.6, in accordance with the guiding principles governing fair process proceedings in Exec. Or. 10865, and subject to the updated substantive changes in the AGs, effective June 8, 2017. Application of the AGs that were in effect as of the issuance of the SOR would not change the decision in this case.

Applicant responded to the SOR on June 23, 2017, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on September 13, 2017 and interposed no objections to the materials in the FORM. He did not supplement the FORM.

Summary of Pleadings

Under Guideline H, Applicant allegedly (a) used heroin between 1980 and at least August 2014; (b) illegally used xanax between 1980 and at least August 2014; (c) illegally used oxycontin from 2009-2014; (d) illegally used prescription Valium and Klonopin, not prescribed to him, in August 2014; (e) received treatment at a substance abuse clinic in January 2013 for a condition diagnosed as alcohol dependence, sedative, hypnotic, or anxiolytic dependence, opioid dependence, and poly-substance dependence; and (f) continued to use alcohol, illegal drugs, and prescription drugs not prescribed to him following his received treatment in 2013.

Under Guideline G, Applicant allegedly (a) consumed alcohol, at times in excess and to the point of intoxication since age 12 to at least January 2013; (b) was arrested in 1985 or 1987 for driving under the influence (DUI); (c) was arrested in 1990 for DUI; and (d) received treatment in January 2013 for diagnosed alcohol dependence, among several diagnosed disorders.

Under Guideline F, Applicant allegedly accumulated 12 delinquent debts exceeding \$17,000. Allegedly, these debts remain outstanding and unresolved.

Under Guideline E, Applicant allegedly falsified his electronic questionnaires for investigations processing (e-QIP) in March 2015 by omitting his (a) past use of illegal and prescription drugs not prescribed to him and (b) sought treatment at several hospitals. Allegedly, Applicant falsified material facts to an authorized investigator of DoD when he falsely told the investigator in an ensuing interview in January 2016 that he has not consumed alcohol since 2000

In his response to the SOR, Applicant admitted the allegations pertaining to his alleged drug use, while denying the inclusive dates of use alleged. He admitted the allegations pertaining to his alleged alcohol consumption (except for the allegations covered by SOR ¶¶ 1.b and 1.d). Applicant admitted the allegations covering his finances

and attributed his financial problems to narcotic dependence and child support burdens. Addressing the falsification allegations, Applicant denied deliberately falsifying his e-QIP , claiming he voluntarily admitted all of the material information asked of him by the investigator from the Office of Personnel Management (OPM), except for information about him that covered substance abuse

Findings of Fact

Applicant is a 52-year-old electronic technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in October 1992 and divorced in August 1995. He has two adult children from this marriage. (Items 2-3) He reported no information about his high school attendance and earned a bachelor's degree in 2005. (Items 2-3) Applicant reported no military service. (Items 2-3)

Since March 2015, Applicant has worked for his current employer. (Items 2-3) He reported unemployment between October 2014 and March 2015. (Items 2-3) Previously, he worked for another defense contractor as a logistics analyst. (Items 2-3)

Applicant's drug and alcohol history

Between 1980 and August 2014, Applicant engaged in poly-substance abuse with multiple drugs, some illegal *per se* (heroin, 1980 to at least August 2014)), others used illegally (xanax, 1980 to at least August 2014 and Oxycontin from 2009-2014), and others not prescribed to him (prescription Valium and Klonopin) in August 2014). (Items 3-6) Historically, Applicant's problems with alcohol resulted in two alcohol-related offenses: DUI arrest and charges in 1985 or 1987 and another DUI arrest and charges in 1990. Disposition of these charges is unclear.

Between January 2013 and July 2016, Applicant received treatment at various substance abuse facilities for diagnosed alcohol dependence, sedative, hypnotic or anxiolytic dependence, opioid dependence, poly-substance dependence, anxiety disorder, and depressive disorder. (Items 3-6) Prescribed medications included anti-anxiety and anti-depression medications. (Items 4-6) His clinical records include discharge recommendations of follow-up with his primary physician and fair prognoses. (Items 4-6) Since his discharges from his respective treatment facilities, Applicant has continued to abuse alcohol and drugs. (Items 3-6)

Applicant's finances

Applicant accumulated a number of delinquent debts over a six-year period between 2010 and 2015. (Items 7-8) Altogether, he accrued 13 delinquent debts

exceeding \$18,000 that he has not addressed. Applicant attributed his delinquent debts to his drug dependence condition and child support obligations. (Items 1 and 3) Applicant has not to date addressed any of his listed delinquent debts. Based on produced credit reports, Applicant's listed delinquent debts remain outstanding and unresolved.

E-QIP omissions

Asked to complete an e-QIP in March 2015, Applicant falsified his security clearance application in multiple areas. (Items 2-3 and 7-8) He denied using controlled substances, illegal drugs not prescribed to him, and prescription drugs not prescribed to him. (Items 2-3 and 7-8) Applicant falsified his e-QIP as well in denying his voluntarily seeking counseling or treatment as a result of his use of a controlled substance. (Item 2)

Afforded an opportunity in January 2016 to correct and clarify the omissions he made in his 2015 e-QIP, Applicant declined to do so. Asked by the investigator from OPM about his alcohol consumption, he falsely told the OPM investigator that he had not consumed alcohol since 2000. (Item 3) And when asked by the same investigator about his use of heroin, he falsely assured the investigator he had not used heroin since 1985. (Item 3)

Policies

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A, AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Drug Involvement and Substance Misuse

The Concern: 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. AG ¶ 24.

Alcohol Consumption

The Concern: 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 ¶ 21.

Financial Considerations

The Concern: 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 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 acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Personal Conduct

The concern: 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 ¶ 15.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant's history of poly-substance abuse and treatment initiatives for poly-substance abuse between 2013 and 2016. His substance abuse history includes illegal and non-prescribed prescription drugs and alcohol abuse. Additional security concerns are raised over his accumulation of delinquent debts over a period of years and his deliberate omissions and misstatements of material information concerning his past drug and alcohol abuse and treatment initiatives in his March 2015 e-QIP and ensuing OPM interview.

Drug concerns

Applicant's lengthy history of drug involvement and substance misuse is cause for applying several disqualifying conditions (DCs) covered by the drug involvement and

substance misuse guideline. DC ¶¶ 25 (a), any substance misuse,' and 25(d), "diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder," apply to Applicant's situation.

Based on the compiled record, none of the potentially applicable mitigating conditions apply. His history of poly-substance abuse is a recurrent one that Applicant initiated in 1980 with his use of heroin and Xanax and expanded to include his use of illegal prescriptions between 2009 and 2014. It is too unclear as to how Applicant's treatment initiatives benefitted him to afford him any benefit of the potentially applicable mitigating conditions covered by Guideline H.

Alcohol concerns

Applicant's history of poly-substance abuse includes abuse of alcohol. He incurred two DUI arrests in the 1985-1987 time period with unclear dispositions. His 2013 treatment records for poly-substance abuse include an alcohol dependence diagnosis. Applicable DCs for alcohol abuse include the following: DC ¶¶ 22(a), "alcohol 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 DC 22(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."

Without more information from Applicant about his current use of alcohol and to what extent any continuing alcohol use affects his other raised substance abuse issues, none of the mitigating conditions potentially available to him are applicable. Alcohol misuse continues to be a security concern of the Government.

Financial concerns

Applicant's accumulation of delinquent debts over a six-year period (2010-2016) warrant the application of three of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), "inability to satisfy debts"; 19 (b), "unwillingness to satisfy debts regardless of the ability to do so"; and 19(c), "a history of not meeting financial obligations."

Applicant's admitted delinquent debts negate the need for any independent proof. See *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant's admitted delinquent debts are fully documented and create some judgment issues. See ISCR Case 03-01059 at 3 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles him to access classified information. While the principal concern of a security clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence,

judgment and trust concerns are implicit in cases involving tax filing lapses and debt delinquencies.

Applicant's cited extenuating circumstances (i.e., unemployment and child support issues) are not sufficiently developed to afford him any extenuation benefit of MC ¶ 20(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, or clear victimization by predatory practice, or identity theft), and the individual acted responsibly under the circumstances." Without any documented evidence from Applicant that he is addressing his delinquent debts, none of the remaining mitigating benefits potentially available to him are applicable to the facts of his case.

Afforded an opportunity to provide probative evidence of progress in addressing his debts, Applicant did not provide any post-FORM information concerning his finances. Financial concerns are not resolved.

Personal conduct concerns

Additional security concerns are posed by Applicant's documented omissions of his covered drug use (both his use of controlled substances and illegal use of prescription drugs) and voluntary treatment initiatives within the covered seven-year time period preceding his March 2015 e-QIP submission. His omissions were both knowing and wilful and covered drug issues material to a security clearance investigation. Applicant's imputed falsification of his e-QIP merits the application of DC ¶ 16(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 compounded security concerns about his level of candor, when he declined to provide prompt and voluntary corrections of his e-QIP omissions in an ensuing OPM interview in January 2016. When asked for time lines covering his past use of heroin and alcohol, Applicant provided false dates of discontinuance of both substances to the interviewing OPM investigator. His misstatements warrant the application of DC ¶ 16(b), "deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official., competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative." Applicant acknowledged his earlier introductions to excessive alcohol consumption and heroin use only after he was confronted by the investigator.

Applicant's answers to questions posed by the OPM investigator who interviewed him in January 2016 were neither prompt nor made in good-faith, free of confrontation. Mitigating conditions are not available to Applicant to absolve him of the lack of candor he displayed in completing his e-QIP and responding to questions asked of him in his

OPM interview about his use of drugs and alcohol. Security concerns raised in connection with Applicant's judgment and candor lapses are not mitigated and preclude favorable conclusions with respect to subparagraphs 4.a through 4.c.

Whole-Person Assessment

Whole-person assessment is unfavorable to Applicant. He has shown insufficient progress to date in addressing the Government's drug, alcohol, finance, and personal conduct concerns. Overall, Applicant's actions to date in addressing his drug and alcohol issues, his delinquent debts, and his lack of candor demonstrated in his e-QIP and ensuing OPM interview reflect too little evidence of restored responsibility and understanding of the risks associated with drug and alcohol abuse relative to his past abuse of illegal drugs (both controlled substances and illegal use of prescribed drugs).

Judgment and trustworthiness concerns associated with his lengthy history of drugs and alcohol abuse and problems with his finances are compounded by his lack of candor exhibited in his repeated failures to provide prompt and accurate answers to questions about his past drug and alcohol use in his e-QIP and ensuing OPM interview to overcome reasonable doubts about his trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18.

Unfavorable conclusions are entered with respect to the allegations covered by the drug involvement, alcohol consumption, financial consideration, and personal conduct guidelines. Eligibility to hold a security clearance under the facts and circumstances of this case is inconsistent with the national interest.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE H (DRUG INVOLVEMENT):	AGAINST APPLICANT
Subparas. 1.a-1.g	Against Applicant
GUIDELINE G (ALCOHOL INVOLVEMENT)	AGAINST APPLICANT
Subparas. 2.a-2.d:	Against Applicant
GUIDELINE F (FINANCIAL CONSIDERATIONS):	AGAINST APPLICANT
Subparagraph 3.a-3.m:	Against Applicant

GUIDELINE E (PERSONAL CONDUCT):

AGAINST APPLICANT

Subparagraph 4.a-4.e

Against Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

