



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



In the matter of: )  
)  
) ISCR Case No. 16-03276  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

March 21, 2018

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**Decision**

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MOGUL, Martin H., Administrative Judge:

**Statement of the Case**

On December 5, 2016, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD 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.

On January 20, 2017, Applicant submitted a written reply to the SOR, and requested the case be decided after a hearing before an administrative judge. (RSOR.) The case was assigned to this administrative judge on March 27, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 19, 2017,

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<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 considered under the previous Adjudicative Guidelines, effective September 1, 2006.

scheduling the hearing for June 6, 2017. The hearing was convened as scheduled on that date.

At the hearing, the Government offered Exhibits 1 through 6, which were admitted without objection. Applicant testified on his own behalf and offered no documents into evidence. The record was left open until June 20, 2017, for receipt of additional documentation. No evidence was received. The transcript (Tr) was received on June 13, 2017.

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.

### **Findings of Fact**

After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 44 years old. He is unmarried and he has no children. Applicant has a Master's degree in business and a Bachelor's degrees in Business Administration and a second in Integrated Supply Chain Management. He served in the United States Marine Corps from 1992 to 2004, when he received an Honorable discharge. Applicant has been employed by a defense contractor since 2005, where he works as an Intermediate Logistics Analyst, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Tr at 5-6, 23-25.)

### **Guideline F, Financial Considerations**

The SOR lists 22 allegations (1.a. through 1.v.) regarding financial difficulties, under Adjudicative Guideline F. All of the SOR allegations were admitted by Applicant on his RSOR.

1.a. and 1.b. allege that Applicant failed to file his Federal and State A tax returns for tax year 2015. At the hearing Applicant testified that he had still not filed his federal and State A tax returns for that year, nor had he attempted to get an extension to file late returns. Applicant also testified that at the time of the hearing on June 6, 2017, he had failed to file his Federal and State A tax returns for tax year 2016, which were overdue. Applicant stated that he did not file his Federal and state tax returns for those years because of financial difficulties, but he conceded it was irresponsible of him not to file. (Tr at 26-28.)

1.c. through 1.v. The rest of the allegations consist of 20 debts totaling approximately \$59,000. At the hearing Applicant testified that he had made one payment of \$150 on allegation 1.i., and he still owed \$194 on that debt. Applicant offered no documentation to show that he had made a payment toward that or any other debt. He also thought that one of the debts for an education loan had been deferred to September 2017, and thus it would not be owing at the time of the hearing. However,

Applicant did not know which debt this was, and he furnished no documentation to establish that any debt was deferred.

Applicant testified that the reason for his delinquent debt was for medical reasons, primarily diabetes, and also because he helped other people by lending them money and they did not fulfill their obligations. He conceded that he never took any kind of financial counseling to help him be better able to handle his finances. (Tr at 34-39, 57.)

### **Guideline J – Criminal Conduct**

The SOR lists four allegations (2.a. through 2.d.) regarding Criminal Conduct, under Adjudicative Guideline J.:

2.a. It is alleged in the SOR that Applicant was arrested in 2008, and charged with Driving Under the Influence of Alcohol/Drugs (DUI).

2.b. It is alleged in the SOR that Applicant was arrested in 2011, and charged with Driving Under the Influence of Alcohol/Drugs (DUI).

2.c. It is alleged in the SOR that Applicant was arrested in 2012, and charged with Driving Under the Influence of Alcohol/Drugs (DUI).

2.d. It is alleged in the SOR that Applicant was arrested in 2014, and charged with Driving Under the Influence of Alcohol/Drugs (DUI) and Driving with a License Suspended or Revoked.

At the hearing, Applicant admitted all four of these allegations. Applicant attributed these arrests and convictions because of “partying,” being out with friends, and then just taking a chance and driving home afterward. He also attributed his drinking to stress from life. He conceded that it was irresponsible of him and “definitely life threatening for all of us that was [sic] involved at the time.” Applicant also added that he no longer drives after consuming alcohol. (Tr at 39-43.)

Applicant testified that because of his fourth DUI in 2014, he has been placed on unsupervised probation for 10 years to 2024. He also conceded that he still owes the court approximately \$3,000 for fines and fees for his 2014 DUI. This is not one of the debts listed on the SOR, and Applicant is also delinquent on this debt. (Tr at 61-65.)

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

The SOR lists one allegation (3.a.) regarding Alcohol Consumption, under Adjudicative Guideline G.:

3.a. It is alleged in the SOR that Applicant's conduct alleged in subparagraphs 2.a. through 2.d., above, constitute excessive alcohol consumption. Applicant conceded that despite his four DUI arrests and convictions he still consumes alcohol, although not

as much as he used to consume. He claimed that he has never been diagnosed as alcohol dependent. He said he started drinking when he was in the military, and his goal was to drink “until you’re drunk fall down [sic].” (Tr at 68-69.)

## **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 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 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 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.:

- (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;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;
- (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;
- (g) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income;

(h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and

(i) concealing gambling losses, family conflict, or other problems caused by gambling.

Applicant has had multiple delinquent debts for several years. The evidence is sufficient to raise disqualifying conditions (a) and (c) are in this case. He also has not filed his Federal or state taxes for at least the last two tax years. Therefore, disqualifying condition (f) also applies in this case.

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

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) the affluence resulted from a legal source of income; and

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

Applicant attributed his delinquencies in part to medical issues. This is a circumstance beyond his control. However, since he has not established that any of his

debts has been resolved. I do not find that he has acted reasonably or responsibly with respect to his debts. Mitigation under AG ¶ 20(b) has not been established, nor do I find that any of the other mitigating conditions under AG ¶ 20 are applicable in this case. Therefore, Guideline F is found against Applicant.

### **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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is applicable:

- (a) evidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted or convicted; and
- (c) Individual is currently on parole or probation.

Because of the four DUI arrests and convictions, especially the fourth and most recent DUI in 2014, for which Applicant will be on probation until 2024, the aforementioned disqualifying conditions have been established.

AG ¶ 32 describes conditions that could mitigate a security concern. I do not find that any of the mitigating factors are applicable in this case. Applicant's criminal past continues to cast doubt on his trustworthiness and judgment. I, therefore, find Guideline J against Applicant.

### **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 notes several conditions that could raise security concerns under AG ¶ 22. After reviewing Applicant's four alcohol related incidents, the most recent in 2014, and considering that Applicant continues to consume alcohol, I find that the evidence is sufficient to raise disqualifying conditions (a) and (c) in this case.

- (a) alcohol related incidents away from work, such as driving while under the influence, . . . 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.

AG ¶ 23 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 23. Because of the evidence introduced about Applicant's current continued alcohol consumption, after four DUIs, I find that no mitigating factor is applicable in this case, and I find against Applicant under Guideline G.

### **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 Guidelines F, J, and G in my whole-person analysis. Overall, the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

### **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.-1.v.:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a.-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.

Martin H. Mogul  
Administrative Judge