



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 17-00213

**Appearances**

For Government: Andrea Corrales, Esquire, Department Counsel

For Applicant: David P. Shelton, Esquire

09/14/2018

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On May 19, 2017, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E Personal Conduct).<sup>1</sup> In a June 26, 2017, response, Applicant answered the allegations and requested a hearing based on the written record. The Government later converted the requested action into a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on May 10, 2018.

A June 1, 2018, notice was issued which set the hearing for June 20, 2018. The hearing was convened as scheduled. The Government offered seven documents, accepted into the record without objection as exhibits (Exs.) 1-7. Applicant offered testimony, introduced one witness, and offered 15 exhibits, accepted without objection as Exs. A-O. The record was held open through July 3, 2018, in the event either party

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<sup>1</sup> The action was taken 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* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on or after September 1, 2006. Subsequently amended, the AG applied here are applicable for any adjudication on or after June 8, 2017.

wished to submit additional materials. With no new documentation received, the record was closed on July 3, 2018. Based on the testimony, materials, and record as a whole, I find Applicant failed to mitigate personal conduct security concerns.

### **Findings of Fact**

Applicant is a 59-year-old help desk information technician who has worked for the same entity for twelve-and-a-half years. After the recent sale of his employing company, Applicant had his former salary of about \$72,000 reduced to about \$60,000 a year. He has held a security clearance since 2005.<sup>2</sup> (Tr. 33) For the past 18 years, he has maintained a second job in pizza delivery, which currently generates about \$12,000 a year. (Tr. 32-33) The regional director for his primary employer spoke of Applicant in the highest terms and urges that Applicant's security clearance be reinstated. (Tr. 71-74) He characterized Applicant as being big-hearted, well-liked, and a superior employee. Similarly favorable recommendations were received from others who know Applicant. (Exs. E-G)

In 1985, Applicant began active duty service in the United States Army, where he served for three years. This was followed by 16 months as an inactive reservist, followed by another 16 months as an active reservist, before he received an other-than-honorable discharge. (Tr. 30-31) Applicant has earned a bachelor's degree in computer information systems. Divorced in 1989, he is the father of two adult children.

At the age of 15, Applicant and a friend began imbibing alcohol on the way to a party. His drinking became problematic after he joined the military in 1985, the same year he was first cited for driving under the influence. (Tr. 25) Around the same time, between about 1986 and 1990, he was cited for such alcohol-related charges as public intoxication and battery. (Tr. 53-56) These included domestic assault and battery. To get the "monkey off [his] back," he sought treatment and began using Antabuse to "get off the drinking over the years."<sup>3</sup> (Tr. 19, 59) He became sober in February 1993 after completing an outpatient addiction program that lasted about one year. (Tr. 19, 59) The recommendation was that Applicant abstain from imbibing. (Tr. 61) For nearly a decade thereafter, he volunteered at shelters for homeless alcoholics. (Tr. 61-62)

Despite his clean living, Applicant encountered trouble when he met a foreign woman in about 2012, when he was working in pizza delivery. The mother of four young boys, she and Applicant began a romantic relationship. Although she looked for steady work, a problem with alcohol kept her from maintaining gainful employment. (Tr. 36) Applicant thought he could help her with her drinking problem. (Tr. 62) After meeting

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<sup>2</sup> In his October 2015 Security Clearance Application (SCA), Applicant disclosed that his previous SCA was from March 2003. In discussing that security clearance in 2015, he noted, "I do IT for the government," in the present tense, suggesting he held a security clearance at that time. (See Ex. 1 at 47 of 53).

<sup>3</sup> Antabuse (Disulfiram) is a drug used to support the treatment of chronic alcoholism by producing an acute sensitivity to ethanol (drinking alcohol). See <https://en.wikipedia.org/wiki/Disulfiram>.

her, he relapsed and began drinking beer. (Tr. 65) During their time together, he helped pay for the woman to bring to the U.S. three of her sons she had left behind in Central America, then began supporting the entire family as his own. Although it led him to be financially over-extended, he helped her out because “she needed help.” (Tr. 36)

In July 2014, Applicant and the woman went to the beach to celebrate Independence Day. The woman began the celebration by buying a bottle of tequila; Applicant eventually treated himself to “some wine.” (Tr. 22) Later that evening, Applicant bought the woman a bottle of tequila. (Tr. 64) As he was driving his vehicle home, he pulled over so the woman could relieve herself by the side of the road.

A passing police officer noted the vehicle off the road and approached the couple. Applicant volunteered that he had consumed some wine, and a sobriety test ensued. Applicant believed he had passed the examination tests until he lost his balance on the “one-leg thing.” (Tr. 24, 66) He failed that part of the sobriety exam.<sup>4</sup> (Tr. 66) Applicant did not feel impaired. (Tr. 24) The officer took him to the police station and his vehicle was towed. Ultimately, he was booked and sent home in a cab.

Applicant was charged with driving a vehicle while under the influence of alcohol (DUI), negligent driving, and attempting to drive while impaired (ADWI). The first two charges were nolle prossed and Applicant pled guilty to the third charge. He did not contest the charge because he was happy with his life at the time and did not want to “be bothered with the law anymore” or miss work commuting to the far away courthouse, even though his counsel said he could “beat this case.” (Tr. 25) He pled guilty because he “just wanted to get it over with.” (Tr. 25) The incident did, however, prompt Applicant to attend Alcoholics Anonymous (AA) for six months as a “kind of once every week recovery.” (Tr. 25-26; see also Tr. 65-67) Applicant has not consumed alcohol since July 5, 2014. (Tr. 26)

Applicant and the woman ended their relationship on Christmas Eve, 2014.<sup>5</sup> (Tr. 21) Applicant was not overly forlorn as, by then, Applicant considered her to be “a nightmare.” (Tr. 21) During their time together, however, Applicant made poor financial decisions in order to support her and her boys. He had been borrowing money to supplement his income. Things began to turn around when he and the woman broke up.

In June 2016, Applicant was interviewed by a Department of Defense investigator. In discussing the June 2014 incident, Applicant stated that he had passed all of the field sobriety tests, neglecting to mention his failure of the “one-leg thing.” During that interview, he also reported that he had not consumed any alcohol between 1992 and the night of the July 2014 DUI incident, despite the fact he had commenced drinking alcohol again in 2012. He “protected [his] recovery over the application

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<sup>4</sup> Applicant had told one of the two officers that he was not impaired. Until this part of the tests, Applicant thought he was passing the exam. He admits that he failed this final portion of the exam. (Tr. 66)

<sup>5</sup> Elsewhere, Applicant reflected that the break-up might have occurred in December 2015. (Tr. 35)

[process]" in order to sustain the appearance his recovery is his top priority, and as a way to avoid intermingling with those who imbibe. (Tr. 28)

At issue in the SOR are seven delinquent debts (allegations 1.a-1.g). In sum, they amount to approximately \$50,000. He has resolved the credit card balances reflected at allegations 1.d, 1.f, and 1.g, representing about \$5,000. This leaves allegations 1.a-1.c and 1.e at issue.<sup>6</sup> (Tr. 37)

The debt at allegation 1.a is part of a repayment program, noted below, but no payments have yet been made toward its \$21,162 balance.<sup>7</sup> (Tr. 42) That is also the case with the \$1,796 debt noted at allegation 1.e. (Tr. 43) Applicant's credit reports reflect he has been in repayment on the debts at 1.b and 1.c. (Tr. 38) The debt at allegation 1.b has been reduced from \$15,429 to about \$5,400, while the debt noted at allegation 1.c has been reduced from about \$10,350 to \$3,700 over the past few years. (Tr. 39-41; Ex. 4) The account balance owed for the debt at allegation 1.e for \$1,796 is also being handled by Applicant's debt consolidator, discussed below. While no payments have yet been made on this account, the consolidator is preparing to negotiate a settlement on the balance. (Tr. 43)

Applicant is currently in a program to consolidate his delinquent debts in an effort to find relief from his debt. He entered that program in May 2015 with nine accounts, of which five have since been satisfied. (Tr. 26) Toward that program, Applicant pays about \$1,041 per month. (Tr. 37) Remaining are his largest delinquent debts (including 1.a and 1.e), which he hopes to satisfy within the next two years, and a debt regarding which Applicant is seeking renegotiation of terms to reduce the balance owed. (Tr. 26-27) To date, he has paid the debt consolidator about \$37,000. (Tr. 27-28) His strategy is to continue with the debt repayment plan until all debts are satisfied.

Applicant has no notable debts outside of the debt consolidation plan. He is current on his regular monthly obligations. Applicant has a checking account with a current balance of about \$2,200 and he maintains a 401k account with a balance of nearly \$20,000. After all monthly expenses, Applicant has a net remainder of about \$100-\$150, which he retains in his checking account. Last year, he purchased a used vehicle to replace his 10-year-old SUV requiring costly repairs. (Tr. 50) He has not taken a vacation in seven years, nor has he made any other major purchases. Applicant maintains a budget in his head; he has not received financial counseling. He plans to continue with his second job in food delivery.

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<sup>6</sup> As correctly noted by Department Counsel, Applicant's credit report reflects that the three accounts with this creditor are now shown in Applicant's credit report as having a zero balance. In making this comment, however, Department Counsel accidentally referenced the accounts at allegations 1.d, 1.e, and 1.f, instead of 1.d, 1.f, and 1.g., which each pertain to the same creditor. (Tr. 37)

<sup>7</sup> Applicant believes his debt relief program, discussed below, is waiting to renegotiate the terms on the debts at allegations 1.a and 1.e. (Tr. 43) He believes this may occur by the end of 2018. (Tr. 44) He has left the management of the debts within that program to the consolidator professionals.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to the AG, the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept, each of which must be fully considered in making a decision.

The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for national security eligibility and 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 record evidence. Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. Under the Directive, an applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Decisions are in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant.

## **Analysis**

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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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.

The Government offered documentary evidence reflecting that Applicant has several delinquent debts. This raises financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

Four conditions could mitigate the finance related security concerns posed here:

AG ¶ 20(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;

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

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

There are multiple delinquent debts at issue, debts dating back to his relationship with the mother of three boys that took place between 2012 and 2014. It was during this time he incurred debt in an effort to rescue this woman from her problems and support her family. While this particular woman may now be out of the picture, it does not necessarily mean Applicant, noted for being big-hearted, will not again try to help another individual in distress to his economic detriment. Moreover, his financial assistance was clearly of his choosing, and not a form of benevolence caused by fraud or some factor outside of his control. Consequently, neither AG ¶ 20(a) nor AG ¶ 20(b) apply. Because he has not sought financial counseling, AG ¶ 20(c) does not apply.

Applicant did, however, provide evidence that he has initiated and successfully implemented meaningful efforts to address his delinquent debt. Although no progress has yet been made on the debt at 1.a, it was incorporated into his debt repayment plan along with the debt cited at allegation 1.e. His credit reports reflect he has been in repayment on the debts at 1.b and 1.c. and made significant progress on reducing the balances owed. The parties agreed that he has resolved the credit card balances reflected at allegations 1.d, 1.f, and 1.g. Today, Applicant is living within his means and retaining a monthly net remainder. He has a retirement account. His needs are not extravagant. With his reasonable strategy successfully in place, AG ¶ 20(d) applies.

## Guideline E, Personal Conduct

The security concern for personal conduct 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 or sensitive information.

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

AG ¶ 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, and

AG ¶ 16(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, 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, or community standing. . . .

In June 2016, Applicant told a Department of Defense investigator he had passed all of the field sobriety tests related to his July 2014 drinking and driving incident, although he has since acknowledged that he failed the final task ("one-leg thing") in the battery of physical tests administered by the police. In addition, he intentionally sought to put himself in a better light by stating he had not consumed any alcohol between 1992 and the night of the July 2014, although, in fact, he abandoned abstinence after he began his 2012-2014 relationship. While his intention was to protect his appearance of sobriety, his obfuscation betrayed the trust and candor expected of both those seeking a security clearance and those maintaining a security clearance.<sup>8</sup> Combined with his history of alcohol-related incidents, both AG ¶ 16(b) and AG ¶ 16(e) apply.

I have considered these facts in light of the AG ¶ 17 mitigating conditions:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

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<sup>8</sup> Comments made at the hearing tend to show that Applicant maintained a security clearance at this time.

AG ¶ 17(b): the refusal or failure to cooperate, omission, or concealment was cause or significantly contributed to by the advice of legal counsel or a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

At best, Applicant's resumption of AA after his DUI citation, renewed abstinence (since July 2014), and his openness regarding his alcohol abuse history shine positively with regard to AG ¶ 17(e) and, to a much lesser extent, AG ¶ 17(d), given the breakup from his former partner. However, the fact that Applicant's renewed sobriety has only lasted four years, when the facts show he easily slipped from abstinence to alcohol use after a considerably longer period before, is worrisome. Of equal or greater concern, depending on whether he maintained a SCA in 2016, are his intentional falsities to a Department of Defense investigator concerning his alcohol-related driving citation and his misleading information regarding the length of his period of sobriety. In light of these sustained concerns, no other mitigating conditions apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. Under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 59-year-old help desk information technician who has worked for the same entity for twelve-and-a-half years. He has maintained a second job to supplement his income for 18 years. His combined income is about \$72,000. He has



excellent references and recommendations, including an assessment by his regional director that Applicant is big-hearted, well-liked, and a superior employee.

During a tumultuous and costly relationship, Applicant incurred considerable debt which later became delinquent. While his motives were clearly honorable in assisting his partner, the resultant delinquent debt raises security concerns. Applicant provided documentary evidence reflecting notable progress toward addressing the debts at issue. His devised strategy has been successful in addressing his debts, and it is his plan to continue with that approach until all delinquent debts are honored. He has the income to do so. Given such progress, financial considerations security concerns are mitigated.

Security concerns regarding personal conduct, however, remain. Applicant has been sober for about four years. In the past, he has maintained sobriety for more than that period, then relapsed. While he is now more mature, a period of at least five years would not be unreasonable for him to demonstrate true commitment to abstinence. More worrisome, however, is Applicant lack of candor with a Department of Defense investigator while being vetted for a security clearance renewal two years ago. The relationship between the government and one wishing access to secret or confidential information demands, and, indeed, is predicated upon complete candor. More than two years of issue-free personal conduct is needed to mitigate related security concerns under these facts.

### **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 F:	FOR APPLICANT
Subparagraphs 1.a-1.g:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge