



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



In the matter of:)
)
) ISCR Case No. 17-01694
)
Applicant for Security Clearance)

Appearances

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

05/07/2018

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline G, alcohol consumption, or Guideline J, criminal conduct. He incurred DWI arrests in 2014 and 2016, and remains on probation until June 2020. He did not provide sufficient evidence to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 6, 2016. On June 13, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, alcohol consumption, Guideline J, criminal conduct, and Guideline F, financial considerations. 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 Security Executive

Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 12, 2017. He requested a decision based on the written record in lieu of a hearing. On August 29, 2017, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1-8. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on September 11, 2017. He did not respond to the FORM. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 8 are admitted without objection. The case was assigned to me on January 17, 2017.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.e, 2.a, 2.b, and 2.f and he denied SOR ¶¶ 2.c, 2.d, 2.e, and the cross-allegation at SOR ¶ 3.a, with some explanations. His admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 43 years old. He was married from 1997 to 2015. He remarried in 2016. He has a 15-year-old son with his first wife, and a stepson. He served in the United States Marine Corps from 1993 to 2002, and was discharged honorably as a staff sergeant (E-6). (Item 2)

Applicant has spent most of his post-military career in the defense industry. He was terminated from one position in May 2015 for being late to work. (Item 2 at 11-12; Item 3 at 2) He was then unemployed until October 2015, when he was hired by his current employer and sponsor for a clearance. (Item 2) He had a clearance in the Marine Corps, and has had one for most of his time in the defense industry as well. He submitted an earlier SCA in 2007. (Items 3, 6)

Guideline G and Guideline J

Applicant began drinking in high school. In September 1992, when he was 18, he was charged with underage consumption of alcohol. (SOR ¶ 1.a) He was in a car with friends, and there was beer in the car. He went to court a month later and paid a \$150 fine. (Item 3 at 5; Item 6 at 31)

In January 1993, Applicant was charged again with underage consumption of alcohol, with having an open container of alcohol, and with disorderly conduct. (SOR ¶ 1.b) The charges were later dismissed after Applicant attended an outpatient alcohol treatment program. (Item 3 at 5; Item 7)

During that treatment program, Applicant was diagnosed as suffering from alcohol abuse. (SOR ¶ 1.c) Applicant admitted ¶ 1.c, but also said he did not recall the

circumstances since it was many years ago. (Item 1) Applicant's 1993 alcohol treatment is noted in a DOD document related to his suitability for a clearance while in the Marine Corps in the mid-1990s. (Item 7) Given Applicant's history of alcohol abuse, he was referred to an alcohol treatment and education program. He completed it in May 1997, "with no signs of returning to abuse alcohol." (Item 7) (SOR ¶ 1.d)

Applicant incurred two arrests for Driving While Intoxicated (DWI) between 2014 and 2016. Those offenses are cross-alleged under Guideline J, but the underage drinking charges are not.

In August 2014, Applicant was pulled over by a police officer after leaving a bar where he had been drinking. He was arrested and charged with Driving While Intoxicated (DWI) (first offense). In May 2015, he pleaded guilty and was sentenced to 12 months in jail (all but five days suspended), and placed on 12 months of unsupervised probation. He was also fined and ordered to attend an alcohol safety awareness program (ASAP). His driver's license was restricted for 12 months. (Item 8 at 7-8) (SOR ¶¶ 1.e, 3.a)

In April 2016, Applicant was at his wife's house¹ watching television. He had been drinking, but reported in his background interview that he had no intention of driving. They later had an argument, and Applicant left to drive to his own house in a neighboring town. He was pulled over and charged with DWI (2nd offense in five years) and with refusing a breathalyzer test. (SOR ¶¶ 1.f, 3.a) He remained in jail for eight days, and then spent 30 days in a halfway house before his court date. (Item 2; Item 3)

Applicant reported both DWI arrests on his June 2016 SCA, noting that his 2016 offense was pending. (Item 2) In June 2016, Applicant pleaded guilty to DWI. He was sentenced to 20 days in jail on the weekends (credit for time served). He was ordered to attend four weeks of ASAP classes and 20 sessions of Alcoholics Anonymous. He was fined \$1,000. His driver's license was suspended for three years, though he could apply for a restricted license after a year. Applicant was placed on four years of unsupervised probation. (Item 3 at 2-3; Item 8 at 1-5) Applicant admitted SOR ¶ 1.f, and stated that he had fulfilled all his court obligations, and that he now has a restricted driver's license. (Item 1) He did not provide any corroborating documentation. Applicant remains on probation until June 2020.

Applicant indicates in his Answer that he has "put my priorities in perspective" since his DWIs and is fully committed to correcting them. He acknowledged his mistakes and said he had taken action to be accountable for them, and to fulfill his obligations. (Item 1)

¹ At the time, Applicant and his second wife maintained separate households. It is unclear from the record whether they had married by then.

Guideline F

Applicant disclosed delinquent debts on his SCA, including a foreclosed home, a repossessed vehicle, and formerly past-due child support. He noted that the debts were due to his unemployment and divorce. (Item 2 at 41-43)

The SOR alleges that Applicant's home had a mortgage that was \$23,536 past due, with a total loan balance of \$270,165. (SOR ¶ 1.a) Applicant explained that after his separation and divorce, and a significant pay cut, he could no longer afford the home. He says the home was foreclosed in June 2016. Applicant states, "I know I have no further obligation and it was a written off debt." He provides no corroborating documentation. Credit reports from September 2016 and March 2017 show a past-due balance on the mortgage but do not reflect a foreclosure. (Item 1, Item 4, Item 5)

SOR ¶ 1.b (\$5,906) is a charged-off account relating to a vehicle. The car belonged to Applicant's former wife, but his name was on the loan. She left the car with him, and it was later repossessed. Applicant has taken no action to resolve the debt, as it was written off. (Item 2, Item 3, Item 4, Item 5)

The remaining delinquencies in the SOR are small medical debts (SOR ¶ 1.c, for \$456; SOR ¶ 1.d, for \$46; and SOR ¶ 1.e, for \$46) Applicant denies these debts, asserting that SOR ¶¶ 1.d and 1.e have been paid, and that ¶ 1.c is on a payment plan. He provides no corroborating documentation. (Item 4, Item 5)

Applicant filed Chapter 13 bankruptcy in August 2013. (SOR ¶ 1.f) Applicant said he filed bankruptcy as his lawyer instructed "as a tactic to get a loan modification" on his mortgage, and that he did not intend to follow through with it. He didn't, and the bankruptcy was dismissed a month later. (Item 2; Item 4)

Applicant stated that since he remarried, his finances are improved and he has been living within his means. He has little debt and limited living expenses. (Item 1) He provided no documents with his answer regarding any payments towards, or the current status of, any of his SOR debts. He provided no details or documents about his current financial situation.

Policies

It is well established that no one has a right to a security clearance.² As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."³

² *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance").

³ 484 U.S. at 531.

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 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 not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, 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 applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline G: Alcohol Consumption

The security concern for alcohol consumption is detailed 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. The following 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.

Applicant has a long history of drinking alcohol to excess and to the point of intoxication. After two charges for underage drinking in the early 1990s, he was ordered to participate in an alcohol treatment program and he was diagnosed with alcohol abuse in 1993. That diagnosis was confirmed in 1997, when he was in the Marine Corps. AG ¶ 22(d) applies to these diagnoses, although they are both very dated, and there is no indication of a more recent diagnosis. However, Applicant's two recent DWIs clearly suggest that Applicant's issues with alcohol are serious, recent, and ongoing.

Applicant's participation in alcohol treatment and education in the 1990s (referenced in SOR ¶¶ 1.c and 1.d) is not disqualifying; indeed, such participation is mitigating. There is also no indication that Applicant was told to abstain from alcohol consumption as a result of his diagnoses of alcohol abuse.

Nevertheless Applicant has ongoing issues with alcohol consumption, as he incurred two DWI arrests between 2014 and 2016. AG ¶ 22(a) applies. AG ¶ 22(c) also applies, as the record evidence of the two DWIs supports a finding that Applicant engaged in recent, habitual consumption of alcohol to the point of impaired judgment.

Conditions that could mitigate alcohol involvement security concerns are provided under AG ¶ 23. The following are potentially applicable:

- (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;

(c) the individual is participating in counseling or a treatment program, has no history of treatment and relapse, and is making satisfactory progress in a treatment program; 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 2014 DWI arrest had no impact on his behavior, as he incurred another DWI two years later. Applicant asserts that he has fulfilled all his court-ordered obligations, but this is uncorroborated. Even if that were not the case, there is also no indication that Applicant is participating in an ongoing counseling or treatment program to rehabilitate his ongoing alcohol issues. He remains on probation until June 2020 for his most recent offense, and his driver's license is currently restricted. Applicant's alcohol issues are too recent and too serious to be considered mitigated. Further, I cannot mitigate Applicant's earlier offenses or his diagnoses of alcohol abuse in the 1990s even though they are dated. Given Applicant's overall pattern and history of alcohol issues, they, too, remain unmitigated. None of the above mitigating conditions apply.

Guideline J: Criminal Conduct

AG ¶ 30 expresses the security concern for criminal conduct:

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 disqualifying conditions are potentially applicable:

(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;

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and

(c) individual is currently on parole or probation.

Applicant's two DWI convictions are cross-alleged under the criminal conduct guideline. He remains on probation for the second DWI until June 2020. The above disqualifying conditions apply.

AG ¶ 32 sets forth the potentially applicable mitigating conditions:

(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; 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.

AG ¶ 32(a) and (d) do not apply, for the same reasons set forth under Guideline G, above. Applicant's alcohol-related criminal issues are recent and ongoing. He remains on probation for his most recent DWI offense until June 2020. Given the record evidence, Applicant needs to establish a much longer track record of responsible behavior and compliance with rules, regulations and the law before his criminal conduct can be considered mitigated.

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting

classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁴

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

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

Applicant accrued delinquent debts, including a repossessed vehicle and a foreclosed home, during a period of unemployment and divorce. AG ¶¶ 19(a) and (c) apply.

AG ¶ 20 sets forth conditions that could mitigate security concerns arising from financial difficulties. The following are potentially applicable in this case:

- (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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's two largest debts are attributable to his divorce and a period of unemployment. The period of unemployment is less of a circumstance beyond Applicant's control than it otherwise might be, since it came after he was terminated for tardiness in May 2015. Nevertheless, he was also divorced during this period, and the two largest SOR debts are his marital home and his wife's car. The divorce was a circumstance beyond Applicant's control. Applicant's small medical debts are also attributable to circumstances beyond his control. The first prong of ¶ 20(b) therefore applies.

For full consideration under AG ¶ 20(b), however, Applicant must establish that he acted responsibly under the circumstances. Applicant has not done so. The most

⁴ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

recent record evidence (a March 2017 credit report) shows that both the mortgage and the auto debt remain past due, and the medical debts remain in collection status.

Applicant asserted in his Answer that the medical debts have been, or are being paid, but he provided no corroborating documentation. The Appeal Board has held that “it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts.”⁵ Even though Applicant’s debts occurred largely due to circumstances beyond his control, he did not provide sufficient evidence that he acted responsibly under the circumstances to resolve them. AG ¶ 20(b) does not apply.

Applicant also relies on his belief that the mortgage debt and the repossessed auto debt have been “written off.” Even if this were true, which Applicant did not establish, a delinquent debt is not considered mitigated because the creditor has charged off the account. A creditor’s decision to charge off a debt for accounting purposes does not affect the debtor’s obligations to the creditor.⁶ Even if that had been established, that would not excuse Applicant from attempting to resolve these debts, since he does not dispute them. He did not establish that he “initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Even if they were incurred some time ago, Applicant’s financial delinquencies are ongoing and unresolved. He did not establish that his financial problems are in the past and are unlikely to recur. He did not establish that he has made a good faith effort to pay or resolve his debts. AG ¶ 20(a) does not apply.

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.

⁵ ISCR Case No. 09-07091 at 2 (App. Bd. Aug 11, 2010).

⁶ ISCR Case No. 09-01175 at 2 (App. Bd. May 11, 2010).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G, J, and F in my whole-person analysis. While Applicant's financial delinquencies are largely attributable to circumstances beyond his control, they are nonetheless unresolved. Applicant has incurred two DWI arrests since 2014, and remains on probation for another two years. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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 G:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Paragraph 2: Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-f:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge