



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



In the matter of:)
)
) ISCR Case No. 17-03001
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esquire, Department Counsel
For Applicant: *Pro se*

05/24/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline G, alcohol consumption. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

On October 4, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E, personal conduct, and G, alcohol consumption,. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on October 23, 2017, and requested a hearing before an administrative judge. The case was assigned to me on January 10, 2017. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 24, 2018. I convened the hearing as scheduled on March 22, 2018. The Government offered exhibits (GE) 1 through 4. Applicant testified and offered Applicant Exhibit (AE) A. There were no objections to any exhibits and all of them were admitted into evidence. The record was held open until April 5, 2018, to permit Applicant an opportunity to submit additional documents. Applicant provided an email and it is marked as AE B. It was admitted without objection.¹ DOHA received the hearing transcript on March 30, 2018.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 48 years old. He earned a bachelor's degree in 1991 and a master's degree in 2002. He married in 2010 and has a 16-year-old stepdaughter. He has worked for his current employer, a federal contractor, since about February 2017. Before then he was self-employed from February 2013 to January 2017. He worked in consulting from August 2011 to December 2012.²

The SOR alleged a delinquent mortgage account (¶ 1.a-\$37,355). This debt is for a second mortgage. The original loan was \$28,000. He used the proceeds of the loan to purchase a car and for living expenses from 2006 to 2008. Applicant explained that in March 2011 he underwent heart surgery. After the surgery and rehabilitation period, he lost his job and missed mortgage payments. At the time, he intended to put the house up for sale and move to a house his wife owned in a different state. After missing several mortgage payments, he decided to let the house be foreclosed, and he moved. He stated he ignored the debt for several months until the creditor contacted him.³ He testified:

Due to lack of lack of hubris or certain facts that I misunderstood, I did not make monthly payments for a certain period of time while I was negotiating that settlement number, and then I realized that was a mistake and entered into a payment plan.⁴

In his answer to the SOR, he stated that the debt was charged off in February 2013, and he "negotiated with [creditor] to attempt a [s]ettlement amount." He indicated he did this on various dates from 2013 to 2016. He testified that in June 2013, the creditor agreed to accept a payment of \$25 a month for the debt, and he has been

¹ Hearing Exhibit I is Department Counsel's email memorandum.

² Tr. 18-22.

³ Tr. 22-24, 30-31.

⁴ Tr. 24.

paying the debt every month. He stated the agreement is in writing, but did not provide a copy of it. No documents were provided to corroborate his payments.⁵

Applicant disclosed this debt on his September 2016 security clearance application (SCA). He disclosed the creditor had offered him a settlement agreement in September 2016, but he did not have the funds to pay it. He further disclosed that he had a payment plan with the creditor, and the first payment was due in September 2016 and would continue until paid in full.⁶

In his October 2017 SOR answer, Applicant stated that he made payments of \$25 to the creditor in September 2016, and from June 2017 through October 2017. He made payments of \$20 in October 2016; \$10 in November 2016; and no payments from December 2016 to May 2017.⁷ He testified that he started an automatic bank withdrawal in July 2017 to consistently make the payments. He did not provide documentary proof of his payments.⁸

In his post-hearing response, Applicant indicated that he had a payment plan agreement with the creditor until the balance is fully paid or a settlement agreement is accepted. He stated he was not interested in a settlement amount. He was unable to provide documentation because of the time restraints.⁹ Applicant testified that in the past he agreed to negotiate a settlement amount with the creditor, but one was never agreed upon. He stated that he always intended to pay this debt. He said that he is fiscally responsible and saves for his stepdaughter's college education and his retirement.¹⁰ Applicant annual income is approximately \$140,000 and a bonus percentage. His wife's annual income from a part time job is approximately \$9,000. No documents were provided to corroborate consistent payments to the creditor or an agreed upon plan.

In February 2012, Applicant was arrested for driving under the influence of alcohol (DUI), endangering a child under 14 years of age with DUI, violation of the move-over law, and open container law. Applicant pled guilty to DUI. As a condition of his guilty plea, the other charges were dropped.¹¹

⁵ Tr. 15, 22-28.

⁶ Tr. 31; GE 1.

⁷ Answer to SOR.

⁸ Answer to the SOR.

⁹ AE B.

¹⁰ Tr. 85-88.

¹¹ Tr. 32.

Applicant testified that prior to his arrest, he and his wife were splitting time between two residences in two different states. While he and his wife were packing to leave and drive to their other house, they both were consuming alcohol. They started drinking about 12:00 p.m. and began their trip around 4:00 p.m. He estimated they each consumed six shots of alcohol. Their daughter was 10 years old at the time. He stated this was the first time he and his wife consumed shots of alcohol together. He said he did not feel intoxicated. Applicant testified his blood alcohol content (BAC) was over .15%.¹²

Applicant was sentenced to a one-year probation, fined, and was required to complete a Level I DUI course. He said that although he and his wife did not have a history of alcohol issues, they discussed reducing their alcohol consumption. Applicant said he went to Alcoholics Anonymous (AA) and got a sponsor. He described himself as a binge drinker. His wife went to Al-ANON. She stopped drinking alcohol after the incident, but resumed in 2014. He successfully completed the terms of his sentence and probation.¹³

In February 2016, Applicant was arrested for a second DUI. He pled guilty to DUI and was sentenced to 12-months probation and fines. His driver's license was revoked for five years. He was ordered to install an ignition interlock on his vehicle if he was issued a temporary license for hardship. The ignition lock was placed on his vehicle in October 2017 and he has been in compliance with maintaining that requirement. He was directed to complete a state-sponsored DUI or drunk risk reduction program. At the time of the arrest, Applicant's BAC was .39%.¹⁴

Applicant disclosed on his September 2016 SCA the circumstances of his February 2016 arrest.¹⁵ He told the government investigator during his March 2017 interview that he was no longer consuming alcohol.¹⁶

At his hearing, Applicant testified that during this time prior to his February 2016 DUI, he was primarily working from home. He had a bottle of alcohol that he hid at home. He had recently lost his job for poor performance and went to Fedex to return some equipment. He then went to the movie theater and consumed 8 shots of alcohol. He then drove about a half mile and stopped his car in a parking lot because he was too drunk to drive. He called his wife on the telephone. He passed out in the car and someone called the police. The car keys were in the ignition and it was running. His wife was at a restaurant, and she was on her way to get him when the police arrived. He

¹² Tr. 32-41.

¹³ Tr. 41-47.

¹⁴ Tr. 51, 53, 55-60; AE A.

¹⁵ Answer to SOR.

¹⁶ GE 1, 4.

said that he was intoxicated for 8 days before he lost his job and was arrested for this DUI. Applicant's AA sponsor contacted him, but Applicant told him to stop calling him.¹⁷

At his court appearance, Applicant was told that in lieu of jail he could attend a 10-day DUI level II alcohol rehabilitation residential program. He chose the program and completed it in November 2016. He was diagnosed with severe alcohol dependence.¹⁸ It was recommended that he enroll in a 12-step program. He went back to AA. He was placed on probation for 12 months and ordered to see an alcohol counselor for 12 visits. He testified he saw the counselor for 18 visits. He testified that he successfully completed this court-ordered counseling in February 2017. He testified he complied with the restrictions on his driver's license and now has a restricted license, and an ignition interlock on his vehicle.¹⁹

Applicant testified he went to AA from the time of his first DUI arrest in 2012 until a month before his 2016 DUI arrest. He stated he has a sponsor again and attends AA three times a week.²⁰

Applicant testified that he took a leave of absence from work in April through June 2017 and completed a 90-day residential alcohol treatment program. While there he reflected on his DUI arrests, reckless conduct, and binge drinking. He said he was able to confront diversions and learn temptation triggers that are no longer present in his life. He continues to have alcohol in the house because his wife still drinks.²¹

Applicant was asked when was the last time he consumed an alcoholic beverage? He testified that it was in December 2017 when he had three drinks of alcohol. He had one in the airport, one on the plane, and one at the airport where he landed. He explained he had a habit of going to the bar when he was at airports. He said it was what he had always done when flying. He stated: "It was a habit that I then addressed in therapy and was able to come up with a solution to."²² He said he has been to airports twice since December 2017 and did not drink. He said he told his AA sponsor about his consumption of alcohol. He further stated that this incident is not part of who he is. He realizes the destruction his drinking will cause, so he looks for the support of his wife and stepdaughter. He stated: alcohol is not a factor in his life. He said he does not intend to consume alcohol again. He stated that after his December 2017 drinking incident, he took two weeks off from work and did an intensive outpatient

¹⁷ Tr. 47-52.

¹⁸ No medical reports were provided or information regarding the professional qualifications of the health care provider who made the diagnosis..

¹⁹ Tr. 60-62; AE A.

²⁰ Tr. 45, 62.

²¹ Tr. 47, 68-74.

²² Tr. 66.

program from December 12th through 23rd. No corroborating documents were provided regarding to show he had successfully completed an outpatient treatment program and all aftercare requirements.²³

Applicant stated he participates in a religious affiliated alcohol-step program that he attended once a month for about 18 months, in addition to AA. He contacts the counselor who he saw after his second DUI from his residential program about once a month. He said that in 2016, he and his wife went to a marriage counselor who specializes in alcohol abuse.²⁴

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 AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information 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. 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

²³ Tr. 63-75, 79.

²⁴ Tr. 76-84.

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.

Section 7 of Executive Order 10865 provides that 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a large delinquent mortgage debt that he defaulted on in 2011. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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; and

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

Applicant defaulted on a loan in 2011. He has made inconsistent small payments since 2016. He testified that he has a payment plan with the creditor that requires him to pay \$25 a month on the \$37,355 debt. The information he provided showed that he missed several months of payments and some were for less than the full amount. He did not provide a copy of that agreement or documentary corroboration for payments made to date. There is insufficient evidence to conclude the debt occurred under circumstances that are unlikely to recur. His failure to responsibly repay the debt cast doubt on his current reliability, trustworthiness, and good judgment. Insufficient evidence was provided to show the debt was the result of circumstances beyond Applicant's control.

No evidence was presented that Applicant has participated in financial counseling. His minimal inconsistent payments do not reflect that the problem is under control, or that the payments constitute a good-faith effort to repay the overdue creditor. None of the above mitigating conditions apply.

Guideline G: Alcohol Consumption

AG ¶ 21 expresses the security concern for alcohol consumption:

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 ¶ 22 describes conditions that could raise a security concern and may be disqualifying. I find the following to be potentially applicable:

(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; 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.

Applicant was convicted of DUI in 2012 and 2016. His 2012 offense occurred while his 10-year old stepdaughter was in the car. He was diagnosed with severe alcohol dependence. Despite his completion of alcohol rehabilitation programs, and a statement that he did not intend to consume alcohol in the future, shortly after receiving the SOR, he consumed three alcoholic drinks in December 2017. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating conditions under AG ¶ 23:

(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 previous 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.

None of the above mitigating conditions apply. Applicant did not provide sufficient evidence to conclude that future alcohol-related incident are unlikely to recur. He

indicated that he participated in extensive alcohol counseling, but did not provide evidence of that participation, a favorable prognosis, or satisfactory progress in a treatment plan. He indicated that he now has control over his alcohol issues, but after participating in a 90-day residential alcohol treatment program that ended in June 2017, he began consuming alcohol in an airport bar in December 2017. This occurred after receiving the SOR in October 2017, and being aware of the Government's concerns. Applicant acknowledges his pattern of maladaptive behavior, but the evidence does not demonstrate that he has adequately addressed his alcohol issues. Applicant presumably has abstained from alcohol consumption since December 2017, a mere three months before his hearing, which is an insufficient amount of time given his history of alcohol abuse.

Applicant's first DUI resulted after consuming six shots of alcohol before he was to drive with his daughter to his second home. His second DUI occurred after he lost his job and drove his car a short way before the police found him passed out with the car running. His BAC at the time of the first arrest was .15%, and at the time of the second arrest it was .39%. The evidence is insufficient to apply any of the mitigating conditions.

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(a):

- (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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 48-year-old educated man. He defaulted on a loan in 2011 and has made minimal efforts to responsibly resolve it. Applicant has two DUI convictions. Despite uncorroborated alcohol treatments and counseling through June 2017, he

consumed alcohol in December 2017. He has not established a significant period of abstinence and his conduct continues to raise questions about his judgment, reliability, and ability to control impulses. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concern arising under the financial considerations and alcohol consumption guidelines.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 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.

Carol G. Ricciardello
Administrative Judge