



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



In the matter of:

ISCR Case No. 17-03674

Applicant for Security Clearance

**Appearances**

For Government: Brittany Muetzel Esq., Department Counsel  
For Applicant: *Pro se*

09/13/2018

**Decision**

DAM, Shari, Administrative Judge:

Applicant has a history of alcohol-related arrests and delinquent debts. He failed to mitigate the resulting financial and alcohol security concerns. Based on the record evidence, national security eligibility for access to classified information is denied.

**History of Case**

On December 16, 2015, Applicant submitted a security clearance application (SF 86). On January 3, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline G (Alcohol Consumption) and Guideline F (Financial Considerations). 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or eligibility to Hold a Sensitive Position* (AG) effective within the DoD on June 8, 2017.

Applicant answered the SOR in writing on January 24, 2018, and requested that his case be decided by an administrative judge on the written record without a hearing before an administrative judge. On March 9, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 10 Items, was mailed to Applicant on March 12, 2018, and received by him on March 30, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not submit additional information in response to the FORM, did not file any objection to its contents, and did not request additional time to respond beyond the 30-day period he was afforded. All Government's Items are admitted into the record without objections. The case was assigned to me on July 30, 2018.

### **Findings of Fact**

Applicant is 30 years old and a high school graduate. He is unmarried and has one child. He attended college between August 2006 and November 2008. (Item 3)

#### **Alcohol Consumption**

Applicant admitted his history of criminal arrests and charges related to the consumption of alcohol as alleged in the SOR. In September 2014, he was arrested and charged with driving under the influence (DUI), 1<sup>st</sup> offense. He was found guilty. His driver's license was restricted for one year, and he was ordered to attend an alcohol substance abuse program (ASAP). He had an interlock device installed in his car for six months. His blood alcohol content (BAC) was .14% at the time of his arrest. He was 27 years old. (Items 2, 4, 5)

In April 2016, Applicant was charged with DUI 2<sup>nd</sup> within 5 years, reckless driving, refusal, and hit and run. He was convicted of DUI 2<sup>nd</sup>, reckless driving, and refusal. The hit and run charge was dismissed. He was sentenced to two years of probation and ordered to again attend ASAP. His driver's license was suspended for one year. (Items 2, 4, 6)

In October 2016, Applicant was charged with DUI 2<sup>nd</sup> within 5 years, failure to maintain control (reckless driving), and no valid driver's license. He was convicted of DUI 2<sup>nd</sup> within 5 years, and the other two charges were not prosecuted. He was placed on probation for three years and his license was suspended. His BAC was .23% when arrested and over the legal limit. (Items 2, 4, 7)

In March 2017, Applicant began alcohol treatment for the two 2016 convictions. He was diagnosed with a severe alcohol use disorder. In June 2017, he tested positive for alcohol and the court extended his treatment until at least May 2018. (Item 1) After a second positive alcohol test in September 2017, his treatment program was extended for 16 weeks and the number of weekly sessions increased. According to his case manager's December 2017 letter, Applicant subsequently was required to attend 81 sessions of treatment in 52 weeks. (Items 2, 4, 8)

During an interview in June 2017 with a government investigator, Applicant said he recognized that he has a problem with alcohol. At that time, he said he had not had a drink since October 2016, and he did not intend to drink in the future. (Item 4)

### Financial Considerations

Based on credit reports from January 2016 and September 2017, The SOR alleged 21 debts that became delinquent between 2011 and 2016, and totaled \$30,031. Applicant admitted all of the debts, except those alleged in ¶¶ 2.f (\$1,020); 2.n (no amount listed); 2.o (no amount alleged); 2.p (\$2,587); and 2.q (no amount listed). Applicant denied those debts and stated that he had either made a payment or settled them. He provided no documentary evidence that specifically confirmed his assertions for those five debts. (Item 2)

Applicant submitted state verifications that he received unemployment benefits for 2010 and 2011, which is a reason that contributed to his financial problems. (Item 4) He provided documentation that he engaged a debt relief law firm in October 2013 to resolve his debts. That agreement included seven creditors, who were owed \$20,812. Some of those creditors are alleged in the SOR. In April 2015, Applicant paid off a loan owed to a financial service creditor. (Item 2) It is not clear whether that creditor is listed in the SOR. He submitted a January 2018 credit report, asserting that it contained proof that he paid some debts, but did not identify them. That credit report continued to document many unpaid debts. No other information was provided specifically pertinent to the status or resolution of the 21 debts.

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 says that an “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 applying for national security eligibility 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline G: Alcohol Consumption**

AG ¶ 21 expresses the security concerns pertaining to 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. The following three may potentially apply:

(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 was arrested and convicted of three DUI offenses, as he was inebriated and over the legal limit for driving after consuming alcohol. He admitted that he was diagnosed with a severe alcohol abuse disorder at a substance abuse facility. The evidence establishes the above disqualifying conditions.

AG ¶ 23 provides conditions that could mitigate security concerns raised under this guideline. Four may potentially apply:

(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.

Sufficient time has not passed since Applicant last consumed alcohol, which, according to this record, was in September 2017 while he was in treatment. He acknowledged his problems with alcohol, but has not demonstrated a significant pattern of either modified consumption or abstinence in accordance with treatment recommendations. AG ¶¶ 23(a) and 23(b) do not apply. In December 2017, Applicant's case manager stated that Applicant's treatment period had been extended to May 2018 and the number of weekly sessions were increased as a result of his relapses. There is insufficient evidence to establish mitigation under AG ¶¶ 23 (c) or 23(d), as there is no evidence regarding his progress or successful completion of a treatment program and compliance with any additional recommendations.

## **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes conditions that could raise security concerns. Three may be potentially disqualifying in this case:

- (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 history of being unable or unwilling to satisfy debts, beginning in 2011 and continuing to date. The evidence established the above disqualifying conditions.

The guideline includes a condition in AG ¶ 20 that could mitigate the security concerns arising from Applicant's delinquent debts. The following potentially apply:

- (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's financial problems are longstanding and remain ongoing. He presented evidence that he was unemployed for a period of time in 2010 and 2011; however, there is no evidence explaining that his unemployment was the result of circumstances beyond his control, and that he acted financially responsible under those circumstances. He hired a debt repair firm to resolve his debts, but he did not provide information showing that his financial problems are under control. He did not present sufficient evidence that he has resolved or is resolving the alleged debts through a good-faith effort. Accordingly, mitigation of financial concerns was not established under AG ¶¶ 20(a), 20(b), 20(c), or 20(d).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G and F in my whole-person analysis. Applicant is a mature adult and is accountable for the decisions that led to his history of alcohol-related incidents and financial problems. He failed to demonstrate sufficient rehabilitation to mitigate the concerns about his judgment, reliability, and trustworthiness that are raised by his pattern of misconduct and irresponsibility. He did not show that continuation or recurrence of financial issues is unlikely, or establish reduced potential for pressure, coercion, or duress arising therefrom.

## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a through 2.u:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. National security eligibility is denied.

SHARI DAM  
Administrative Judge