



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



In the matter of:)
)
) ISCR Case No. 14-05619
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

05/09/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the personal conduct, financial considerations, and alcohol consumption security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 7, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct), F (financial considerations), 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on September 2, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on October 1, 2015. A complete copy of the file of relevant material

(FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on October 8, 2015. As of November 12, 2015, he had not responded. The case was assigned to me on December 4, 2015. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer since 2001. He is a high school graduate. He married in 1994 and divorced in 2001. He married his second wife in 2004. He has three children, ages 20, 17, and 11.¹

Applicant performed cardiopulmonary resuscitation (CPR) on his father before he passed away in 2007. The event was traumatic, and Applicant's doctor prescribed an antidepressant.²

Applicant was drinking in about June 2009 when he threatened to kill himself by firearm or by the police ("suicide by cop"). His friend called the police. The police took Applicant into custody and transported him to a mental health facility. He was placed on a 72-hour hold, but he was released the same day.³

In about September 2009, Applicant cut himself with a knife and made suicidal threats. He had consumed alcohol before the incident. His friend called the police. The police took Applicant into custody and transported him to a mental health facility. He was placed on a 72-hour hold and released the next day.⁴

In late 2011 or early 2012, Applicant placed a fraudulent registration sticker on his car because he did not want to pay for a legitimate registration sticker. In December 2012, he drove with his family in the car after drinking. He was arrested and charged with driving under the influence (DUI) of alcohol; driving with a blood alcohol content (BAC) greater than .08%; child cruelty causing injury or death; and unlawful display of evidence of registration. He pleaded guilty to unlawful display of evidence of registration and the lesser charge of reckless driving. The remaining charges were dismissed. He was sentenced to a \$1,200 fine and probation for three years.⁵

¹ Item 3.

² Item 4.

³ Item 2.

⁴ Items 2, 4. Applicant only described one suicidal incident during his background interviews. In his response to the SOR, he admitted both allegations of the incidents. I therefore accept that there were two incidents.

⁵ Item 2-4, 8.

Applicant submitted a Questionnaire for National Security Positions (SF 86) in March 2013. He reported his DUI arrest and pending charges. He also reported a \$4,000 delinquent debt. Section 21 asked if Applicant had “consulted with a health care professional regarding an emotional or mental health condition” or if he had been “hospitalized for such a condition.” Applicant intentionally falsified the SF 86 by answering “no” and failing to divulge his hospitalization and treatment as discussed above.⁶

Applicant was interviewed for his background investigation in March 2013. He discussed his financial issues and his DUI. He did not correct the false information on his SF 86, and he stated that he had never had any problems related to alcohol other than the DUI. He was interviewed telephonically about his finances in April 2013. He did not correct his false SF 86.⁷

Applicant was interviewed again in July 2013, at which time he was confronted with the September 2009 incident. Applicant discussed the incident. He stated the doctor evaluated and discharged him with no follow-up because the doctor did not believe that Applicant was a risk. Applicant stated that he had never wanted to commit suicide before the event, and he did not plan to do it again. He stated that he was not receiving counseling and he did not feel that he had a drinking problem. He stated that he did not disclose the information on the SF 86 because he was embarrassed and worried about losing his job.⁸

Applicant was interviewed telephonically in August 2013. He stated that after the September 2009 incident, he was advised to follow-up with his doctor. His doctor prescribed Prozac, which Applicant was still taking as of the date of the interview. His doctor also requested that Applicant obtain alcohol counseling. Applicant attended alcohol counseling once a week for a month, at which time he stopped because he did not believe he had an alcohol problem.⁹

Applicant has had financial problems for a number of years. He filed a Chapter 7 bankruptcy case in 1998, and his debts were discharged the same year. He had more recent financial difficulties, which he attributed to his wife losing her job. He stated that his wife handled the finances and he was unaware of the extent of his financial problems.¹⁰

The SOR alleges the Chapter 7 bankruptcy, an unpaid \$1,920 judgment, and 15 delinquent debts totaling about \$13,700. Applicant admitted all the financial allegations, except he stated that his wages were garnished to pay the judgment. The judgment and

⁶ Item 3.

⁷ Item 4.

⁸ Item 4.

⁹ Item 3.

¹⁰ Item 2-4.

debts are listed in one or more credit reports obtained in March 2013, May 2014, and March 2015.¹¹

The 2014 and 2015 credit reports list the judgment as filed in March 2014. They do not report the judgment as satisfied. Applicant did not submit any documentary evidence showing the judgment was satisfied or that any of the other debts have been paid.¹²

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 to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant 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

¹¹ Items 2, 4-7.

¹² Items 2, 6, 7.

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. 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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

Applicant has three alcohol-related incidents. AG ¶¶ 22(a) and 22(c) are applicable.

AG ¶ 23 provides conditions that could mitigate security concerns. 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 good judgment;
- (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser); and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant's most recent alcohol-related incident was in December 2012. Applicant attended alcohol counseling at his doctor's request, but he did not complete it because he did not believe he had an alcohol problem. It is Applicant's burden to establish any mitigating conditions. He did not do so. There are no mitigating conditions sufficiently applicable to dispel security concerns about Applicant's alcohol use.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

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

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant intentionally provided false information about his mental health treatment on his SF 86. AG ¶ 16(a) is applicable.

Applicant's alcohol-related incidents and criminal conduct reflect questionable judgment and an unwillingness to comply with rules and regulations. They also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

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

(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;

(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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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

Applicant did not correct the false SF 86 until he was confronted with the information during his third interview. His various statements are inconsistent and not worthy of belief. He is either still on probation or recently released from probation. He does not believe he has an alcohol problem despite the alcohol-related incidents. There are no applicable mitigating conditions.

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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

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

Applicant was unable or unwilling to pay his debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed his financial difficulties to his wife losing her job, which is a circumstance that was beyond his control. He stated that his wages were garnished to pay the judgment, but he did not submit any documentary evidence showing the judgment was satisfied or that any of the other debts have been paid. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

There is insufficient evidence in the written record for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) is partially applicable. None of the other mitigating conditions are applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

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 E, F, and G in this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the personal conduct, financial considerations, and alcohol consumption security concerns.

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
Subparagraphs 1.a-1.q:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraphs 2.a-2.d:	Against Applicant
Paragraph 3, Guideline G:	Against Applicant
Subparagraph 3.a:	Against Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge