



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



In the matter of:	)	
	)	
	)	ISCR Case: 14-04856
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

September 30, 2015

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a history of financial delinquencies, excessive alcohol consumption, and criminal misconduct. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

**Statement of Case**

On January 20, 2014, Applicant submitted a security clearance application (e-QIP). On February 10, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guidelines F (Financial Considerations), J (Criminal Conduct), and G (Alcohol). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant responded to the SOR (Answer) on March 4, 2015 and requested a hearing before an administrative judge. The case was assigned to me on July 6, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 8, 2015, scheduling the hearing for August 7, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered Exhibits (AE) A through F, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on August 17, 2015.

### **Findings of Fact**

Applicant is 39 years old. He served on active duty in the Army from 1994 to 1997, and on active duty in the Navy from 1999 to 2007. He achieved the rank of petty officer first class. He is in the process of divorcing his wife and has custody of the one minor child from that marriage. He has five other minor children from other relationships. He is currently employed by a government contractor. (Tr. 24-25.)

As listed in the SOR, Applicant is delinquent on 59 debts in the total amount of \$103,995, including 3 student loans, 35 medical debts, 17 consumer debts, and unpaid taxes owed to his state and the Federal government. His debts are identified in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 3; GE 4; GE 5; GE 6.)

Applicant admitted he was indebted to the Federal and state governments for delinquent income taxes. Applicant was alleged to have two tax liens against him in the amounts of \$1,448 and \$4,704 for unpaid 2011 state taxes, as listed in SOR ¶¶ 1.a and 1.b. Applicant's August 2015 credit report reflects these are valid current liens. He was alleged in SOR ¶ 1.ggg to have failed to file his state income tax returns for tax years 2005 through 2012, which led to a debt of \$5,520 owed for state taxes. Further, in SOR ¶ 1.fff, he allegedly failed to file his Federal income tax returns in 2008 through 2012 which led to a Federal income tax debt totaling approximately \$26,000.

Applicant testified that he filed his Federal and state income tax returns for 2007 through 2014. He provided documentation from the IRS that shows he filed his 2008 and 2009 Federal income tax returns late, in July 2012. His 2010 Federal income tax return was filed in a timely manner, in February 2011. His 2011 and 2012 Federal income tax returns were filed late, in December 2013. He claimed that the state garnished his pay and state income tax refunds to resolve his state tax obligations. He presented documentation that shows he resolved the state tax debts for 2005 through 2008, 2010, and 2012. He still owes \$1,568.76 for his 2009 state taxes. He provided no documentation on the status of his state tax debt from 2011. He testified that he negotiated a payment agreement with the Internal Revenue Service to make monthly payments on his 2009 Federal tax debt, but that he has not made any payments under

the agreement. He failed to file and pay his Federal and state income tax obligations because it “wasn’t a priority to [him] at the time.” (AE C; Tr. 40-44.)

Applicant’s denied SOR allegation SOR ¶ 1.nn because he did not recognize the creditor. However, he has not formally contested this debt. (Answer; Tr. 56.)

SOR ¶¶ 1.c, 1.d, and 1.e pertain to delinquent student loans. Applicant entered into a student loan rehabilitation program in February 2015 to rehabilitate these debts through monthly payments of \$5 to this creditor. He failed to present documentation that he is making monthly payments as agreed upon under the written rehabilitation agreement. (AE A; Tr. 53-55.)

SOR ¶¶ 1.l through 1.o, 1.r, 1.s, 1.v through 1.cc, 1.ff through 1.kk, 1.oo through 1.qq, 1.ss, 1.tt, and 1.vv through 1.eee, are delinquent medical bills. Applicant sought emergency medical treatment at a local hospital, because he was not near a Veteran’s hospital at the time of his illness. He had no medical insurance to cover his hospitalization. The Veteran’s Administration did not cover his hospitalization either. Applicant has not repaid any of these debts. (Answer; AE B; Tr. 47-51.)

Applicant has not paid any of the consumer debts identified in SOR ¶¶ 1.f through 1.k, 1.p, 1.q, 1.t, 1.u, 1.dd, 1.ee, 1.ll, 1.mm, 1.rr, and 1.uu. He testified he lives pay check to pay check and does not have excess money to pay these debts. (Tr. 51.)

Applicant’s criminal history extends from 2000 to 2010. Applicant was arrested for Driving Under the Influence (DUI) in 2000, 2001, 2005, 2007, 2009, and twice in 2010. He admitted all seven DUIs in his Answer, but testified that he only had one DUI in 2010. With respect to his most recent DUI conviction, he pled no contest to driving with a blood alcohol content (BAC) of greater than .08% on March 3, 2011. At the time of arrest in 2010, his BAC was .22%. He was ordered to complete an alcohol program, and sentenced to 120 days in jail. He was placed on probation for 5 years. His criminal history also includes arrests and convictions for criminal damage to private property and criminal trespass in June 2000; charges of fugitive from justice in September 2001; a dismissed charge of contempt of court in September 2001; a dismissed charge of inflicting corporal injury spouse/cohabitant in July 2004; driving without interlock device and driving on a suspended license in November 2007; and driving without interlock device and driving on a suspended license in October 2008. He denied the 2001 contempt of court charge, although it is documented in his FBI record. (GE 1; GE 2; AE D; AE E; Tr. 27-40.)

Applicant was ordered to attend alcohol counseling in 2002, 2005, 2007, and 2010. He admitted that he was administratively separated from the Navy with an honorable discharge due to his alcohol related incidents. He testified that he stopped drinking alcohol after his 2010 DUI. He does not attend Alcoholics Anonymous or other ongoing treatment. (Answer; Tr. 27-40.)

Applicant provided three letters describing his good judgment, trustworthiness, integrity, and reliability from military members he served with in the Navy. He testified that he has always handled proprietary information correctly and would never give protected information to anyone improperly. (AE F; Tr. 20.)

### **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, 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. According to AG ¶¶ 2(a) and 2(c), 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 access to classified information 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 avoided drawing 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[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."

A person applying for access to classified information 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 access to classified information. 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 information.

## **Analysis**

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

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant has a history of financial indebtedness documented by 59 debts in the total amount of \$103,995. He has failed to satisfy even the smallest of these debts, ranging between \$16 to \$40, voluntarily. Only his state tax debts, for tax years 2005 through 2008, 2010, and 2012, were resolved through involuntary garnishment of wages and tax returns. The evidence raises both of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial problems are ongoing. He provided no documentation to establish that he has voluntarily made payments on any of the 59 delinquent debts alleged. His financial situation is unlikely to be resolved in the near future and casts doubts on his reliability and judgment. AG ¶ 20(a) has not been established.

Applicant blamed the 35 unpaid medical debts on his emergency hospitalization, an event beyond his control. He accepted responsibility for his failure to file and pay his Federal and state income tax obligations. Further, he failed to act responsibly to address the any of his debts in a timely manner. Only his state tax debts from 2005 through 2008, 2010, and 2012, have been resolved. The rest of his debts remain unaddressed. AG ¶ 20(b) has not been fully established.

Applicant failed to produce documentation to show that he received counseling for his financial problems. There are no clear indications that his financial problems are being resolved or are under control. AG ¶¶ 20(b) and 20(c) have not been established.

Applicant testified that he denied one of the debts because he did not recognize the account. However, he failed to take any formal steps or otherwise document his dispute on that account. AG ¶ 20(e) has not been established.

### **Guideline J, Criminal Conduct**

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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 are potentially applicable:

(a) a single serious crime or multiple lesser offenses;

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and

(d) individual is currently on parole or probation.

Applicant has a history of multiple criminal arrests and convictions that occurred from 2000 to 2010, including seven DUI convictions. These offenses give rise to concerns about Applicant's judgment and reliability, both because of the nature and number of criminal offenses. Further, he produced no documentation to show he has been released from probation. The aforementioned disqualifying conditions have been established.

Four Criminal Conduct mitigating conditions under AG ¶ 32 are potentially applicable:

(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;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's criminal past continues to cast doubt on his trustworthiness and judgment. His numerous offenses spanned a decade, are recent, and he failed to present evidence to show that similar criminal conduct is unlikely to recur. AG ¶ 32(a) does not provide full mitigation.

Applicant failed to present evidence to show that he was pressured into criminal acts. He admitted each of the allegations. Neither AG ¶¶ 32(b) nor 32(c) provides mitigation.

Applicant failed to introduce evidence of rehabilitation. While he expressed remorse for his past and testified that he currently abstains from alcohol use, he presented nothing to show job training or higher education, a good employment record, or constructive community involvement. Given his record of alcohol violations, not enough time has passed to establish successful rehabilitation. AG ¶ 32(d) does not provide full mitigation.

## **Guideline G, Alcohol Consumption**

AG ¶ 21 expresses the security concern 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 disqualifying conditions raised by the evidence are:

(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 was convicted of seven DUI offenses from 2000 to 2010, after he consumed alcohol to the point of having impaired judgment. These incidents raise security concerns under AG ¶¶ 22(a) and 22(c).

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; 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 alcohol-related incidents occurred over a ten-year period. While he is currently abstaining from alcohol use, he is still on probation for his last DUI. Other than completing the court-ordered alcohol counseling classes, he produced little evidence of rehabilitation that would show future misconduct is unlikely to occur. No prognosis was offered into evidence. Applicant failed to meet his burden to mitigate the alcohol-related concerns.

### **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, J, and G in my whole-person analysis. Applicant served honorably in the Army and Navy. However, his alcohol consumption and criminal conduct brought his military service to an end and led to his discharge. Despite numerous DUIs, Applicant continued to drive a motor vehicle after consuming alcohol in excess. He failed to present enough evidence of rehabilitation to overcome a heavy burden to mitigate his alcohol use and criminal conduct. Further, he has a significant number of unresolved financial delinquencies. Overall, the record evidence raises serious doubts about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from the cited adjudicative guidelines.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.ggg:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a through 2.m:	Against Applicant
Paragraph 3, Guideline G:	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	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.

Jennifer I. Goldstein  
Administrative Judge