



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 23-02541

Appearances

For Government: Rhett Petcher, Esq, Department Counsel

For Applicant: *Pro se*

03/04/2025

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate financial consideration concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On April 2, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DCSA CAS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DoD) Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on July 12, 2024, and requested that his case be resolved on the written record without a hearing. Applicant received the File of Relevant Material (FORM) on December 5, 2024, and elected not to respond to the FORM. This case was assigned to me on February 18, 2025. The Government's case consisted of six exhibits that were admitted without objection as Items 1-6.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated six delinquent consumer debts exceeding \$20,000 and a federal tax debt of \$23,000 for tax year 2011. Allegedly, Applicant's delinquent debts have not been resolved and remain outstanding. Additionally, Applicant allegedly failed to file his federal and state income tax returns for at least tax year 2022.

Under Guideline G, Applicant allegedly (a) was arrested and charged with driving under the influence of alcohol (DUI) on multiple occasions between May 2021 and January 2023 and (b) consumed alcohol, at times in excess and to the point of intoxication, from about 1997 to at least December 2023.

In Applicant's response to the SOR, he denied all of the allegations pertaining to his finances as well as the alcohol-related allegations pertaining to his alleged January 2023 DUI and (b) his excessive drinking since about 1997 to at least December 2023.

Findings of Fact

Applicant is a 40-year-old employee of a defense contractor who seeks a security clearance. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in August 2014 and divorced in January 2022. (Item 3) He has no children. Applicant earned a high school diploma in June 2003. He reported no military service. (Item 3)

Since December 2022, Applicant has been employed by his employer as a structures mechanic. (Item 3) Previously, he worked for other employers in various technical positions. He reported brief unemployment in 2022. Item 3) He is sponsored for a security clearance by his current employer, but has never held a security clearance. (Item 3)

Applicant's Finances

Between 2021 and 2023, Applicant accumulated delinquent consumer accounts (seven in all) exceeding \$20,000. He attributed his debts to insufficient financial resources to cover his debts. (Items 4 and 6-7)

Besides his consumer debt delinquencies, Applicant accrued delinquent federal taxes owed in the amount of \$23,000 for tax year 2011. (Items 2 and 4) To date, he has made no documented efforts to address this tax delinquency. Records further document Applicant's failure to file his federal and state income tax returns for tax year 2022. (Item 2) Applicant provided no updated information as to whether or when he filed his federal and state tax returns for this tax year in issue.

The developed record contains no information as to how much monthly income Applicant currently earns. He provided no financial information covering his monthly income and expenses and any monthly remainder he retains.

Applicant's alcohol-related incidents

Applicant was introduced to alcohol in 1997 at the age of 13. (Item 4) He obtained his alcohol from his friend's parents' home and regularly consumed multiple beers on weekends. (Item 4) By the time he reached his 20s, he regularly consumed more alcohol, to include multiple shots of hard liquor on weekends during family weekends. (Item 3) Later, in his 30s he expanded his drinking choices to include 12-packs of beer during family weekends, sometimes consuming as much as 18 beers on a weekend. (Item 3) To what extent Applicant can be credited with reducing his rate of alcohol consumption following his last DUI charges in December 2023 cannot be accurately evaluated from the evidence by Applicant in his personal subject interview (PSI) and SOR response. (Items 3-4)

Records document Applicant's involvement in three alcohol-related incidents between May 2021 and January 2023. (Items 3-4) All of the incidents include both DUI arrests and charges and are covered in Applicant's FBI rap sheet. (Item 4) Dispositions cannot be identified and evaluated from the produced records, and Applicant provided no explanation of the circumstances surrounding his charged DUI offenses. (Items 2 and 5) Based on the strength of Applicant's admissions of two of his DUI arrests (SOR ¶¶ 2.b-2.c) and consideration of all of the surrounding circumstances of his DUI arrests (inclusive of disclaimed December 2023 DUI arrest and charge) and charges, Applicant's three DUI arrests and charges are sufficiently supported to warrant entered findings.

Records also fully support inferences of Applicant's consuming alcohol, at times to excess and to the point of intoxication, between 1997 and at least December 2023. (Items 2-3) Applicant provided no probative evidence of his reduction of alcohol consumption from the abusive levels he established in his 20s. Asked to elaborate on his current alcohol consumption.

In his personal subject interview (PSI), he told the interviewing investigator that he "jokes a lot" when under the influence of alcohol. (Item 3) His statements reveal no affirmative efforts on his part to abstain from abusive drinking after December 2023. (Item 3) His last reported alcohol-induced blackout occurred in November 2023, which is only a little more than a month removed from when he claimed he last consumed alcohol. (Item 3)

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” As Commander in Chief, “the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Egan.* at 527. Eligibility for access to classified information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. These AGs include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for

pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Financial Considerations

The Concern: 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 or 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 acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Alcohol Consumption

The Concern: 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 ¶ 21.

Burdens of Proof

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours.

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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865, Feb. 20, 1960, § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines

presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant's accumulation of eight delinquent debts (exceeding \$77,000) that raise trust, reliability, and judgment concerns about her current and future ability to manage her finances safely and responsibly. These concerns are addressed below.

Financial concerns

Applicant's accumulated delinquent debts warrant the application of two of the disqualifying conditions (DC) of the financial consideration guidelines. DC ¶¶ 19(a), "inability to satisfy debts" and 19(c), "a history of not meeting financial obligations," apply to Applicant's situation. His admitted tax and debt delinquencies require no independent proof to substantiate them. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6th ed. 2006). His admitted tax debt delinquency and tax-filing lapse are fully documented and raise judgment issues over the management of her finances. See ISCR Case No. 03-01059 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified information. While the principal concern of a security clearance holder's demonstrated difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving delinquent debts.

Historically, the timing of addressing and resolving his eight debt delinquencies (inclusive of his consumer and tax debts and tax-filing lapse) (SORs ¶¶ 1.a-1.i) are critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015); ISCR Case No. 14-00221 at 2-5 (App. Bd. June 29, 2016).

Without documented evidence of Applicant's resolving his current debt delinquencies and tax-filing failure, potentially available mitigating conditions are quite

not available to him. In the past, the Appeal Board has consistently imposed evidentiary burdens on applicants to provide documentation corroborating actions taken to resolve financial problems, whether the issues relate to back taxes or other debts and accounts. See ISCR Case No. 19-02593 at 4-5 (App. Bd. Oct. 18, 2021); ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 20, 2020). Afforded opportunities to do so, Applicant has provided insufficient information on the status of his debts and available financial resources to address them .

Alcohol concerns

Security concerns are raised over Applicant's multiple years of alcohol abuse to the point of intoxication (to include three DUI arrests and charges between 2021 and 2023). On the strength of the evidence documented in the record, two disqualifying conditions (DCs) of the alcohol consumption guideline apply. DCs ¶¶ 22(a), "alcohol-related incidents away from work, such a driving 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 22(c), "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol abuse disorder," are all applicable to the facts of record in Applicant's case.

Without more documented information on the efforts he has made to minimize the risks of future alcohol-related incidents, Applicant is ill-positioned to take advantage of any of the potentially available mitigating conditions. Both his lengthy drinking history and recency of his DUI arrests and charges reflect behavior (both past and recent) inimical to the current reliability, trustworthiness, and judgment requirements necessary for holding a security clearance. His alcohol consumption history is not accompanied by any credible established pattern of modified consumption or abstinence. Nor has he provided any evidence of recent treatment or counseling designed to neutralize recurrence risks.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of accumulated delinquent debts and tax-filing lapse and history of abusive drinking are fully compatible with minimum standards for holding a security clearance. While Applicant is entitled to credit for his work in the defense industry, his efforts are not enough at this time to overcome his repeated failures or inability to address his debts, file his tax returns, as required, and avoid alcohol abuse. Overall good judgment, reliability and trustworthiness are not established.

Based on a consideration of all of the facts and circumstances considered in this case, it is too soon to make safe predictions that Applicant will be able to undertake documented good-faith efforts to mitigate the Government's financial concerns alcohol abuse within the foreseeable future. More time is needed to establish the requisite levels of stability with his finances and drinking to establish his overall eligibility for holding a security clearance. I have carefully applied the law, as set forth in *Department*

of Navy v. Egan, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations and alcohol consumption security concerns are not mitigated. Eligibility for access to classified information is denied.

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:

GUIDELINE F (FIANCCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a-1.i: Against Applicant

GUIDELINE G: (ALCOHOL CONSUMPTION) AGAINST APPLICANT

Subparagraphs 2.a-2.d: 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.

Roger C. Wesley
Administrative Judge