



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



In the matter of:

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ISCR Case No. 24-00336

Applicant for Security Clearance)

Appearances

For Government:

John C. Lynch, Esquire, Department Counsel

For Applicant:

Pro se

03/27/2025

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant has not mitigated the security concerns raised under Guideline J (criminal conduct), Guideline G (alcohol consumption), Guideline E (personal conduct), and Guideline F (financial considerations). National security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions on November 11, 2022 (the Questionnaire). On August 23, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J, G, E, and F. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within DoD after June 8, 2017.

Applicant responded to the SOR allegations in an undated document (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on January 16, 2025. The case was assigned to me on January 29, 2025. DOHA sent Applicant a Notice of Hearing on February 13, 2025, scheduling the case to be heard via Microsoft Teams video teleconference on March 7, 2025.

I convened the hearing as scheduled. Department Counsel offered 12 documents marked as Government Exhibits (GE) 1 through 12, which I admitted without objection. Applicant testified but did not submit any documentary evidence at the hearing. I left the record open for a brief period to give him the opportunity to supplement the record. He submitted two documents in a timely manner. I marked the documents as Applicant Exhibit A and B and admitted them into the record without objection. The record closed on March 12, 2025. DOHA received the transcript of the hearing (Tr.) on March 13, 2025. (Tr. at 17-19, 21, 72-74.)

Findings of Fact

Applicant is 36 years old. He has a high school diploma. He has been employed by a U.S. Government contractor as a mechanic since May 2023. Applicant is seeking national security eligibility for the first time. He lives with his fiancée and the fiancée's five minor children from prior relationships. Applicant also has two minor children from a prior relationship. Those children live with their mother. (Tr. at 5, 22-27, 29; GE 1 at 5, 8-9-10, 15-22, 33.)

The Government alleged in the SOR that Applicant is ineligible for a security clearance for a number of reasons set forth under four adjudicative guidelines. In the Answer, Applicant admitted all of the allegations and in a few cases, he added details as noted below. I find the following facts as set forth in the pleadings, developed at the hearing, and detailed in the documentary record:

Paragraph 1, Guideline J (Criminal Conduct)

Under this guideline, the Government alleged that Applicant has been charged with criminal offenses on six occasions during the period 2009 to 2019. The SOR also sets forth eight other allegations involving Applicant's failures to comply with court orders arising out of his criminal charges and with the terms of two probationary sentences.

SOR ¶ 1.a. March 2009 Arrest – Possession of Controlled Substance. Applicant was arrested and charged with possession. He was 20 years old at the time. The charge was dismissed for lack of sufficient evidence. In the Answer and at the DOHA hearing, Applicant admitted that he was arrested and charged with possession, but he asserted

that the prosecutor rejected the charge and declined to prosecute the case. (Tr. at 44; GE 2 at 37; GE 5 at 5-6.)

SOR ¶ 1.b. July 13, 2011 Arrest – Driving Under the Influence (DUI) with BAC of .08 or more. Applicant was arrested and charged with DUI. He pleaded guilty to a lesser charge, Wet and Reckless, and was sentenced to 24 months of probation and a five-day suspended jail sentence. Applicant admitted these facts in the Answer, and the Government provided documentary evidence establishing the SOR allegations. (GE 2 at 36-37; GE 5 at 6-7.)

SOR ¶ 1.c. March 5, 2018 Arrest – DUI with BAC of .15% or more.

SOR ¶ 1.d. July 2018 Failure to Complete Court-Ordered Alcohol Education Program.

SOR ¶ 1.e. October 2018 Failure to Comply with Court Order as set forth in SOR ¶ 1.d, above.

On March 5, 2018, Applicant was arrested and charged with DUI with BAC of .15% or more. He pleaded no contest on May 9, 2018, to this second DUI charge. He was sentenced to 36 months of summary probation, suspension of his driver's license for one year, community service, and a fine. He was also ordered to attend classes in a six-month, first-offender alcohol education and counseling program. On August 6, 2018, the court revoked Applicant's probation due to his failure to complete the six-month alcohol education program in July 2018. Applicant failed to appear in court on that date, as required, and the court issued a bench warrant in the amount of \$26,000. His probation was subsequently reinstated and then revoked again on October 11, 2018, for failure to appear as required. A new bench warrant was issued in the amount of \$15,000. Applicant continued to fail to appear in court as required on multiple occasions and more bench warrants were issued. Applicant finally appeared in court on February 20, 2019, and the court revoked his probation and set a probation violation hearing to be held on February 22, 2019, which was continued to April 2, 2019. At the hearing on that date, Applicant's probation was revoked, and the court imposed a sentence of 120 days in jail, which was mostly suspended as discuss in SOR ¶ 1.g, below. The court also ordered Applicant to pay a fine of \$735 on or before July 15, 2020. Applicant failed to pay the fine as required, and this fine along with others previously imposed on Applicant were referred to collections. (GE 1 at 26-27, 37-38; GE 2 at 34; GE 4 at 50-72; GE 5 at 7-8.)

SOR ¶ 1.f. June 2018 Charged with Two Driving Offenses. Applicant was charged with the offense of Driving with a Suspended License for having a BAC above the Legal Limit. The second offense was Driving without a Seat Belt. The offenses occurred on April 27, 2018. In his Answer, Applicant admitted these allegations. The disposition of the charges does not appear in the record.

SOR ¶ 1.g. November 2018 Charged with Two Counts of Simple Battery. These charges arose out of a dispute at a bowling alley that became physical when Applicant and the second party exited the establishment. In his background interview, Applicant claimed that the other person was the aggressor. However, the police and the prosecutor rejected Applicant's contention, and he was charged with Battery. He learned about the charges when he next appeared in court on charges arising out of the DUI arrest discussed in subparagraph 1.h, below. On April 2, 2019, he was sentenced in this case along with the case discussed in subparagraphs 1.c, 1.d, and 1.e, above, and the case discussed in subparagraph 1.h, below. The court imposed a combined sentence of 120 days of jail time. Applicant testified that he actually served only two or three days in jail. He could not explain why his sentence was reduced. (Tr. at 36-37; GE 1 at 28-29; GE 2 at 34-35; GE 4 at 39-45.)

SOR ¶ 1.h. November 21, 2018 Arrest – DUI. Applicant was arrested and charged with DUI Third Offense, DUI Third Offense BAC .08%, Driving while License Suspended for a DUI Conviction, and Driving without Ignition Interlock Device. He pleaded no contest on February 22, 2019, to DUI Third Offense and Driving while License Suspended for a DUI Conviction. Applicant's driver's license had been suspended at the time of this DUI arrest following his conviction for his March 2018 DUI arrest. At a probation and sentence hearing on April 2, 2019, Applicant was sentenced to 60 months of summary probation, 120 days of jail time, which was mostly suspended as noted above, fines in the total amount of \$754, and a 30-month alcohol education and counseling program (the Program). He was also ordered to comply with a prior department of motor vehicle (DMV) requirement that he install an ignition interlock device. Applicant admitted this SOR allegations in the Answer. At the DOHA hearing, Applicant admitted that his driving with a suspended license was a "serious offense because I was told not to drive." For the reasons discussed below, his license remains suspended as of the date of the DOHA hearing, almost seven years later. He hopes to be eligible for a driver's license once he completes the Program (see below). (Tr. at 29-30, 45-48; GE 1 at 29-30; GE 2 at 35-36; GE 4 at 3-6, 7-14, 15-20; GE 5 at 11-12; GE 11 at 2.)

SOR ¶ 1.i. June 28, 2019 Probation Revocation for Failure to Comply with Court Order. The court received a notice from the DMV that Applicant had not complied with the DMV's order to install an ignition interlock device. The court preliminarily revoked Applicant's probation and issued a bench warrant in the amount of \$5,000. Applicant appeared at the next court date of August 2, 2019. The case was continued until September 19, 2019, at which time Applicant was required to present proof of his enrollment in the Program. Applicant enrolled, and his probation was reinstated. Applicant testified at the DOHA hearing that he could not comply with the interlock device requirement at that time because he did not own a vehicle. However, he subsequently purchased a vehicle and installed an ignition interlock device to comply with the DMV requirement and the court's order. (Tr. at 45-47; GE 4 at 22-24.).

SOR ¶ 1.j. January 2020 Failure to Comply with Court Order to Complete the Program. Applicant was terminated by the Program for violating the program's requirements. The court granted him until March 6, 2020, to reenroll. The court was notified on February 13, 2020, that Applicant had complied. He was granted until September 23, 2021, to complete the Program. Applicant admitted this allegation in the Answer. (GE 4 at 25-26; GE 11 at 6-7.)

SOR ¶ 1.k. October 2021 Termination from the Program and Probation Revocation for Failure to Comply with Court Order. Applicant failed to attend the Program's sessions during a period of more than 21 days and was terminated from the Program on October 6, 2021. On November 8, 2021, the court received notice of the termination. The court revoked Applicant's probation on November 19, 2021, and issued a bench warrant in the amount of \$2,000. On March 9, 2022, Applicant was ordered to appear in court, and he failed to appear. His probation remained revoked. The court also issued a bench warrant in the amount of \$55,000. Applicant again failed to appear at the next court date of May 5, 2022, to address his probation violation. The court issued a bench warrant in the amount of \$75,000. On September 1, 2022, he finally appeared at court and was instructed to reenroll in the Program. He submitted to the court proof of his reenrollment on October 3, 2022. He was ordered to return to court on March 9, 2023, for a progress report on his participation in the Program. Applicant admitted this allegation in his Answer. (GE 4 at 26-29; GE 11 at 6, 8.)

SOR ¶ 1.l. March 9, 2023 Failure to Appear in Court for Progress Report. Applicant failed to appear in court and a bench warrant was issued in the amount of \$150,000. The court ordered that Applicant's probation remain preliminarily revoked. Applicant admitted this allegation in the Answer. (GE 4 at 30-31; 11 at 5, 7.)

SOR ¶ 1.m. May 5, 2023 Failure to Appear in Court for Progress Report. Applicant again failed to appear in court for a progress report on May 5, 2023, as required. Applicant admitted this allegation in the Answer. (GE4 at 32; GE 11 at 7.)

SOR ¶ 1.n. July 2023 Termination from Court-Ordered Program. Applicant failed to attend the Program for more than 21 days and was terminated again from the program in July 2023. On September 18, 2023, Applicant appeared in court as "a bench warrant walk-in" and was represented by a Public Defender lawyer. The court granted him until October 20, 2023, to reenroll in the Program. He reenrolled on October 18, 2023, and at the October 20, 2023 hearing date, Applicant submitted proof to the court that he had reenrolled. The court ordered that Applicant's probation remain revoked. His next probation violation hearing was scheduled for May 10, 2024, which was rescheduled for November 21, 2024. (GE 4 at 32-35.)

At the DOHA hearing, Applicant explained that he had failed to appear in court so many times because he simply forgot his court date or was working "crazy hours." He

advised that he attended the November 21, 2024 court hearing, and it was continued until April 25, 2025. A court document in the record (GE 11) disputes that testimony stating that he failed to appear in court on that date. He also explained that he was unable to attend the Program appointments prior to July 2023, which led to his termination from that program because he was hospitalized at that time with a serious illness. He testified further that he was also delayed in completing the Program because he could not afford to pay for the classes, which was a requirement. In the Answer, Applicant admitted this allegation and noted his hospitalization. As of the date of the hearing, he had still not completed the Program. He asserted that he had one more class to attend. Applicant submitted after the hearing a document on the letterhead of the Program, dated February 28, 2025. This document reflects that Applicant has satisfied all of the requirements of the Program, except that he has one more individual counseling session to complete, which was scheduled for March 24, 2025. It also provides his initial "Enrollment Date" of September 13, 2019, and the "Estimated date of Completion" as March 13, 2022. (Tr. at 12, 14, 29, 33-35, 38, 57; GE 11 at 5, 8; GE 12 at 8; AE A.)

Paragraph 2, Guideline G (Alcohol Consumption)

Under this guideline, The Government has cross-alleged eight allegations set forth above under Guideline J, specifically subparagraphs 1.b, 1.c, 1.d, 1.e, 1.h, 1.j, 1.k, and 1.n. See findings under subparagraphs 1.b, 1.c, 1.d, 1.e, 1.h, 1.j, 1.k, and 1.n, above.

Paragraph 3, Guideline E (Personal Conduct)

SOR ¶ 3.a. Provided False Answer to Government's Interrogatory. In the Answer Applicant admitted that he provided false information in his November 20, 2023 response to the Government's interrogatories by stating that he had not consumed alcohol since 2019. One document in the record verified by Applicant as accurate reflects that he continued to consume alcohol until at least March 2023. At the hearing, he testified that his last drink was in 2021, and in his opening statement he claimed that his last alcoholic drink was in 2019 or 2020. Applicant's admission in the Answer and the record evidence have established this allegation. (Tr. at 14, 37-38; GE 2 at 9, 11, 12, 36; GE 3 at 2, 3; GE 6 at 18, 22, 66, 70, 72, 77.)

SOR ¶ 3.b. Provided False Answer to DOHA's Interrogatory. In the Answer Applicant admitted that he provided false information in his July 10, 2024 response to the DOHA's interrogatories by stating multiple times that he had not consumed alcohol since 2018. Applicant's admission in the Answer and the record evidence have established this allegation. (Tr. at 37-38; GE 2 at 9, 11, 12, 36; GE 3 at 9, 11, 12; GE 6 at 18, 22, 66, 70, 72, 77.)

SOR ¶ 3.c. Cross-Allegation of the 14 allegations set forth under Guideline J. See findings under SOR paragraph 1, above.

Paragraph 4, Guideline F (Financial Considerations)

In the Answer, Applicant admitted each of 13 SOR allegations under Guideline F. At the hearing, he admitted that he has not resolved the financial obligations, except as noted below. (Tr. at 40-41.) The SOR allegations and the status of each obligation or debt is as follows:

SOR ¶ 4.a. Failure to File Federal Tax Returns for Tax Years (TYs) 2017, and 2019 through 2023. In the Answer, Applicant admitted the allegation with respect to his federal tax returns for TYs 2019 and 2020. He claimed he did not make enough money to require the filing of tax returns in those years. He wrote further that he failed to file a return for TY 2023. He made no reference to TYs 2017, 2021, or 2022. At the hearing, he admitted that he worked for his cousin at a construction job during those years and was paid cash “under the table” without any federal or state tax filings or tax withholdings by his employer. He never sought professional advice about his tax filing obligations under these circumstances. He claimed that he filed his 2023 tax return with his TY 2024 return in early 2025. He also admitted that his statement in the Answer that he did not make enough income to be obligated to file tax returns during the years in question was not true. Applicant’s tax-filing obligations have not been fully resolved. (Tr. at 40-41, 43-44, 48-49.)

SOR ¶ 4.b. Failure to File California Tax returns for TYs 2017, and 2019 through 2023. Applicant admitted this allegation in the Answer. See SOR ¶ 4.a, above, for more information. Applicant’s tax-filing obligations have not been fully resolved.

SOR ¶ 4.c. Indebted for Child Support Arrearage (\$10,178). In the Answer, Applicant admitted this debt. At the hearing, he acknowledged that he had not resolved this debt for child support arrearages. He said his wages were being garnished for his current child support obligations. After the hearing Applicant submitted documentary evidence showing that he had paid the child support with involuntary weekly payments out of his paycheck in the amount of \$66.92 during 2024. The exhibit from his county child support service, dated March 11, 2025, further reflects that the employer had withheld \$318.92 every week during the period January 3, 2025 to March 7, 2025. The increased size of the weekly payments may be for the purpose of reducing the substantial arrearage. Applicant’s arrearage, however, has increased to \$13,815, according to GE 12, an official document from the local child support agency, from an amount of \$10,178 as of April 29, 2024. GE 12, dated February 28, 2025, reflects that the last payment on the arrearage was on February 16, 2024. There is no clear evidence that this debt is being resolved by involuntary weekly payments. (Tr. at 14-15, 56; GE 1 at 34-35; GE 3 at 10; GE 7 at 5; GE 9 at 5; GE 12 at 2; AE B at 1-3.)

SOR ¶ 4.d. Past Due on Account with a Lender (\$150). At the hearing, Applicant offered no information or documentation regarding a resolution of this debt. This debt is unresolved. (Tr. at ; GE 7 at 6.)

SOR ¶ 4.e. Indebted on a Charged-Off Store Credit Account (\$798). This debt arose out of an installment sales contract. Applicant asserted at the hearing that he had paid this debt. GE 12 reflects that this account has a zero balance. This debt is resolved. (Tr. at 40-41; GE 3 at 8; GE 7 at 7; GE 8 at 2; GE 9 at 3, 7; GE 12.)

SOR ¶ 4.f. Indebted to a jewelry store on a Charged-Off Account (\$332). Applicant noted in his Answer and at the hearing that he had paid this debt. It does not appear in the most recent credit report in the record. This debt is resolved. (Tr. at 42, 49-50; GE 3 at 9; GE 7 at 8; GE 8 at 2; GE 9 at 4; GE 12.)

SOR ¶ 4.g. Indebted on a Collection Account with a Cellphone Service Provider (\$2,693). Applicant admitted this debt in the Answer. At the hearing, he offered no information or documentation regarding a resolution of this debt. This debt is unresolved. (GE 3 at 7; GE 8 at 2; GE 9 at 2.)

SOR ¶ 4.h. Repossessed Vehicle Account Balance (\$25,905). In the Answer Applicant admitted that he owed this debt in connection with a repossessed vehicle. He stopped paying for the vehicle after losing his job in December 2017. He testified that the auto retailer that sold him the vehicle in 2015 or 2016 and repossessed it in about 2017 was no longer in business. He said that he does not know who to contact to make payment arrangements. This debt is unresolved. (Tr. at 51-53; GE 3 at 9; GE 9 at 3.)

SOR ¶ 4.i. Indebted on a Charged-Off Loan Account (\$2,263). Applicant noted in the Answer that he has made arrangements for a payment plan to resolve this debt. He provided no further information or documentation to support this claim. Applicant has not satisfactorily mitigated this debt. (GE 3 at 7; GE 9 at 2.)

SOR ¶ 4.j. Indebted on a Collection Account (\$519). Applicant noted in the Answer that he has made arrangements for a payment plan to resolve this debt. He provided no further information or documentation to support this claim. Applicant has not satisfactorily mitigated this debt. (GE 3 at 8; GE 9 at 3.)

SOR ¶ 4.k. Indebted on a Medical Collection Account (\$383). Applicant noted in the Answer and at the hearing that he had paid this debt. It does not appear in the most recent credit report in the record. This debt is resolved. (Tr. at 50; GE 3 at 9; GE 9 at 4; GE 12.)

SOR ¶ 4.l. Indebted to a Bank on a Judgment (\$5,011). Applicant admitted this debt in the Answer. At the hearing, he testified that he spoke with the creditor and was

told he could not make any payments because it had already sought to enforce its judgment with a wage garnishment sent to his employer. He further stated that he had investigated the matter of a garnishment with his employer and was unable to find any evidence that the creditor was seeking payment on its judgment. He has not pursued the matter with the creditor. This debt is not resolved. (Tr. at 54-57; GE 10.)

SOR ¶ 4.m. Delinquent Court-Imposed Fines and Fees in Collection, as Alleged in Subparagraph 1.e, Above. In the Answer, Applicant admitted that he had failed to pay certain fines and fees ordered by the court, as alleged. He offered no evidence at the hearing that he had paid these fines and fees. This debt is not resolved. (Tr. at 42-43.)

Mitigation

Applicant testified at the DOHA hearing that he has not been in any “trouble since 2018” and has learned his lesson. He asserted that he is very involved with his children and his fiancée’s five children. He has attended meetings of Alcoholics Anonymous (AA). His last meeting was about a year ago. He attends these classes to “keep me grounded.” He also participates in a men’s group at his church, which he described as similar to AA meetings. Applicant believes that he used to have a drinking problem, but that is no longer true. He has never been diagnosed with an alcohol abuse problem or attended sessions with a therapist to discuss his use of alcohol, though he did participate in counseling sessions as part of the Program. (Tr. 39-40, 58, 69.)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (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, “Any 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. 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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, “Any 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 also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1, Guideline J (Criminal Conduct)

The security concern under this guideline is set out in AG ¶ 30 as follows:

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 four conditions that could raise security concerns. The following three conditions have possible application to the facts of this case and may be disqualifying:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual’s judgment, reliability, or trustworthiness;

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted;

(c) individual is currently on probation; and

(d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant's six sets of criminal charges and five convictions establish AG ¶¶ 31(a) and 31(b). Also, Applicant's probation was revoked as of the close of the record due to his having repeatedly violated the terms of his probation. If he was in compliance with the court order, he would be on probation at this time. In addition, he was originally expected to complete the 30-month Program by March 2022. As of the close of the record, he still had one more class to complete. Moreover, he repeatedly violated the terms of his probation by missing more than 21 days of the Program and being terminated from the Program. Accordingly, AG ¶¶ 31(c) and 31(d) are established. These conclusions shift the burden to Applicant to rebut, extenuate, or mitigate the security concerns raised by the criminal conduct disqualifying conditions.

AG ¶ 32 sets out four mitigating conditions under Guideline J. The following two conditions have possible application to the facts in this case:

(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; and

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

Neither mitigating condition has been established. Applicant's last arrest was in November 2018 and that resulted in a conviction in February 2019. If he had fully complied with the terms of his probation and all court orders after that conviction, sufficient time might be deemed to have elapsed to permit a conclusion that further criminal activity is unlikely to recur. However, his repeated violations of court orders and probation violations and his multiple failures to appear in court when required clearly establish that Applicant has not resolved his extensive pattern of violating obligations imposed upon him by the criminal law, the court, and ancillary parts of the criminal justice system. This behavior as well as his six arrests and five convictions cast serious doubts on Applicant's reliability, trustworthiness, and good judgment.

At this time, Applicant's failure to complete the Program requirement imposed upon him in his February 2019 sentence for his third DUI establishes that he has not successfully changed his behavior or experienced a successful rehabilitation. In addition, his long recent history of parole violations and failures to appear in court negate any evidence of rehabilitation.

Paragraph 2, Guideline G (Alcohol Consumption)

The security concerns relating to the guideline for alcohol consumption are set out in AG ¶ 21, which states:

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 seven conditions that could raise security concerns. The following three conditions have application to the facts of this case and may be disqualifying:

- (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
- (f) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant's consumption of alcohol raises security concerns under the first two of the above potentially disqualifying conditions. Also, he did not provide credible evidence as to when he began to abstain from alcohol or even whether he is currently abstaining. His failure to complete in a timely manner the 30-month Program establishes the third condition. Accordingly, the burden shifts to Applicant to rebut, extenuate, or mitigate the security concerns raised by his alcohol consumption. AG ¶ 23 sets forth the following four mitigating conditions under Guideline G:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such 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 mitigating conditions have been fully established. He has not provided any evidence that he is in compliance with treatment recommendations. His completely inconsistent compliance with court orders and probation requirements do not evidence satisfactory progress in a treatment program. As of the close of the record, he had not completed a court-ordered counseling program. Also, he did not provide consistent and credible evidence that he was in fact abstaining from consuming alcohol or was in compliance with any treatment recommendations.

Paragraph 3, Guideline E (Personal Contact)

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes the following two conditions that may raise security concerns and potentially be disqualifying in this case.

- (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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(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 individual may not properly safeguard classified or sensitive information.

The cross allegation in SOR ¶ 3.c repeating the allegations under Guideline J do not establish AG ¶ 16(c) because the credible adverse information alleged under Guideline E only references a single adjudicative area and is sufficient for an adverse determination under Guideline J, as concluded in the Guideline J analysis, above. Accordingly, the language of AG ¶ 16(c) precludes application of that potentially disqualifying condition. SOR ¶ 3.c is resolved in favor of Applicant.

AG ¶ 16(a), however, is established by Applicant's admissions to the SOR allegations in subparagraphs 3.a and 3.b in the Answer. The record evidence and Applicant's testimony also support the conclusion that his responses to the Government Interrogatories and to DOHA's Interrogatories regarding the date of Applicant's last consumption of alcohol were intentionally false. As a result, the burden shifts to Applicant to rebut, extenuate, or mitigate the security concerns raised by the security concerns raised by his repeated falsifications in his responses to the interrogatories.

AG ¶ 17 sets forth seven mitigating conditions under Guideline E. The following two mitigating conditions under Guideline E have possible application to the facts of this case:

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

Neither of the quoted mitigating conditions apply. Applicant never made an effort to correct the falsification even after being confronted with the facts. When asked to explain his deliberately false interrogatory responses, he had no reply, but instead offered two alternative later dates of his last consumption of alcohol, *i.e.*, 2000 and 2021. Applicant was confronted at the hearing with his own verified statement made during his background interview that his last alcoholic drink was as recent as 2023, not 2021 or 2000 and certainly not 2019 or 2018 as falsely stated in his interrogatory responses. He had

no response. Also, the falsifications are not minor or infrequent, and they cast significant doubt on Applicant's reliability, trustworthiness, and good judgment.

Paragraph 4, 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 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.

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

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The SOR sets forth 13 allegations of delinquent debts and failures to file income tax returns and to pay court fines and fees. The record evidence established all but three of the allegations, which involve debts that Applicant claims he has paid. Accordingly, the burden shifts to Applicant to rebut, extenuate, or mitigate the security concerns raised by security concerns under Guideline F.

The guideline includes the following four conditions in AG ¶ 20 that could mitigate the 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, 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.

None of the above mitigating conditions have been established. The behavior was frequent and much of it occurred over the past three or four years. Some of it is ongoing, such as the child support arrearage and the failure to file tax returns for the years when Applicant was paid in cash to avoid taxation. No evidence was presented that the circumstances were beyond Applicant's control. Even if the circumstances met that mitigating requirement, Applicant has not acted responsibly in correcting his financial delinquencies. Applicant has not received any financial counseling and there is no evidence to support the view that his problems are being resolved or are under control. Although Applicant claims that he has paid three small debts totaling about \$1,500, he has not shown that he has initiated and is adhering to a good-faith effort to repay or resolve his remaining delinquent financial obligations.

Whole-Person Concept

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

Under 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 guidelines and the whole-person concept.

I considered the above whole-person factors and the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant's total abuse of the court system trying to give him an opportunity to favorably resolve his extensive criminal record evidences a complete lack of responsibility and maturity. His falsifications and delinquent debts also support an unfavorable whole-person evaluation. Applicant claims he is a different person than his criminal record would suggest. His behavior since his last criminal offense in 2018 do not support his claim. Overall, the record evidence leaves me with significant questions and doubts as to Applicant's suitability for national security eligibility and a security clearance.

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 J:	AGAINST APPLICANT
Subparagraphs 1.a through 1.n:	Against Applicant
Paragraph 2, Guideline G	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	Against Applicant
Subparagraph 3.c:	For Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraphs 4.a through 4.d:	Against Applicant
Subparagraphs 4.e and 4.f:	For Applicant
Subparagraph 4.g through 4.j:	Against Applicant
Subparagraph 4.k:	For Applicant
Subparagraphs 4.l and 4.m:	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 national security eligibility. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge