



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



In the matter of:)
)
) ISCR Case No. 23-01744
)
Applicant for Security Clearance)

Appearances

For Government: Mark Lawton, Esq., Department Counsel
For Applicant: Ronald Sykstus, Esq.

03/28/2025

Decision

Hyams, Ross D., Administrative Judge:

Applicant mitigated the financial considerations, criminal conduct, and alcohol consumption security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 15, 2021. On October 12, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations), Guideline J (criminal conduct), and Guideline G (alcohol consumption). Applicant responded to the SOR on November 17, 2023, and requested a hearing before an administrative judge. The case was assigned to me on September 6, 2024.

The hearing was convened as scheduled on December 17, 2024. Department Counsel submitted Government Exhibits (GE) 1-5, which were admitted in evidence without objection. Applicant's Exhibits (AE) A-T were admitted in evidence without objection.

Findings of Fact

In his answer, Applicant admitted all SOR allegations with explanation. His admissions are incorporated into the findings of fact. After review of the pleadings, testimony, and evidence submitted, I make the following additional findings of fact.

Applicant is 52 years old. He earned a bachelor's degree from one of the military academies in 1994 and earned an MBA in 2002. He was married from 2003-2008. He has worked for a defense contractor since 2010. Her served on active duty in the military from 1994-2003. (Tr. 13-15; GE 1)

The SOR alleged the following concerns under Guideline F:

SOR ¶ 1.a alleged that Applicant failed to timely file federal income tax returns for tax years 2005-2011, 2013, and 2018. He reported there were various reasons that he was unable to timely file, including: he had a dispute with his ex-wife over who could claim his stepson as a dependent on their taxes; he had difficulty obtaining 1099's; he had to adjust his income one year after filing, which impacted the next filing year; and he had some health problems which impacted his ability to file. Since 20019, all of his income tax returns have been timely filed and paid. He does not owe the IRS any back taxes. (Tr. 16-41; GE 2, 3, 4, 5)

The SOR alleged the following concerns under Guideline J:

SOR ¶ 2.a alleged that Applicant was arrested in 2013 and charged with leaving the scene of an accident – death or severe injury. Applicant reported he had been driving during a stormy night and hit a curb to avoid hitting a car that stopped short in front of him. He later found he was wanted for leaving the scene of an accident. He turned himself in and pled not guilty. Insurance covered the damages. The driver, who claimed he hit her went to the hospital to be checked out. Applicant asserted it was a mistake, and he had not been drinking. Applicant was convicted and sentenced to three years of probation, fines, and fees. He reported meeting with his probation officer once monthly, and successfully completing his sentence. He reported that he did not drink alcohol during the time he was on probation. (Tr. 16-41; GE 3)

SOR ¶ 2.b alleged that Applicant was arrested in 2012 for Driving Under the Influence of alcohol (DUI). Applicant had been drinking and driving and was observed swerving by police. He pled guilty and received one year probation, fines, and fees. He met with a probation officer once monthly and was tested for drugs and alcohol, which he passed. (Tr. 42-86; GE 3)

SOR ¶ 2.c alleged that Applicant was arrested in 2011 and charged with DUI. He reported he was riding a bike intoxicated, because his driver's license had been suspended. After he attended substance abuse classes held by a state DUI Taskforce and five AA meetings, the case was Nolle pros. (Tr. 42-86; GE 3)

SOR ¶ 2.d alleged that Applicant was arrested in 2008 and charged with DUI. Applicant refused the breathalyzer, because he felt he was being treated unfairly by police. He reported the police officer was called to military duty, and the case was Nolle pros. (Tr. 42-86; GE 3)

SOR ¶ 2.e alleged that Applicant was arrested in 2005 and charged with DUI and driving with an expired tag. He reported he was stopped at a sobriety checkpoint and refused a breathalyzer. The case was Nolle pros. (Tr. 42-86; GE 3)

SOR ¶ 2.f alleged that Applicant was arrested in 1997 and charged with DUI. He was pulled over for an expired inspection sticker and he failed a field sobriety test. The case was transferred to the Navy, and he received punishment through a Captain's Mast. (Tr. 42-86; GE 3)

The SOR alleged the following concerns under Guideline G:

SOR ¶ 3.a alleged that Applicant consumed alcohol, at times in excess and to the point of intoxication, from 1997 to present. Applicant attended his first alcohol treatment program in about 1997. He did not drink when he was on probation after his convictions. He went to counseling in 2015 to appease his girlfriend at the time. After his 2011 DUI arrest, he was required to attend classes held by the state DUI Taskforce. He also had to attend five Alcoholics Anonymous (AA) meetings. Since then, he has attended 2-4 AA meetings monthly. He thinks that the meetings are a useful tool to curb his alcohol usage. He does not agree with all the dogma of AA and does not agree with all of the 12 steps, although some have been helpful to him. He is not a religious person, and AA has a strong religious viewpoint, and advocates only a higher power can rid him of being an alcoholic. He does not have a sponsor, because his goal is not complete abstinence, which some people who attend require. He does not have cravings to drink, and his health issues prevent him from consuming alcohol regularly or in substantial quantities. These health issues started in 2008 and became serious by 2013. (Tr. 16-100)

Applicant stated he understands the government's concerns in this case. He had to ride a bike and bus for four years because he had no driver's license. He has 25 years of experience in the defense industry and will not put his job or clearance in jeopardy again. He noted in his SCA and background interview that he is a recovering alcoholic and treats himself carefully around alcohol. As he has aged, he has more health issues now, and his former lifestyle is no longer suited to him. He stated that he has never been diagnosed with alcohol use disorder or dependence, and he has never been told to completely abstain. There is no evidence in the record that contradicts his assertion. He reported that he occasionally has a beer with friends socially. On those occasions, he never drives. He finds it easier to moderate his alcohol usage in this way than by complete abstinence. He made an analogy to dieting, that it's easier to occasionally eat a small portion of dessert than to assert he is never having cake again and then to try to stick to it. This method, along with regular attendance at AA meetings has worked for him. He stated he is in a good place, and it took 12 years to get here. He asserted he is not going

back to his old ways and has not had an alcohol related incident since 2012. He reported his friends know about his former problem and support him as well. (Tr. 16-100; GE 1, 3)

Witness One, a retired O-6, attended a military service academy with Applicant and worked with him at various points in his career. They remain close friends. He knows that Applicant's age and health issues, along with his change in behavior, have caused him to moderate his alcohol consumption. He relies on Applicant for advice and perspective, and thinks he is trustworthy and should be granted a clearance. (Tr. 102-115)

SOR ¶ 3.b cross-alleged the information in SOR ¶¶ 2.b to 2.f. Those allegations were discussed under Guideline J, and relevant information was mentioned in the discussion of ¶ 3.a, above.

Applicant submitted performance reviews and award documentation from his current employer and military service, which show he is an excellent employee. He also provided a copy of his DD-214. (AE A-T)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 ¶ 21, 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 national security eligibility will be resolved in favor of the 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 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 F, Financial Considerations

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

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.

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

(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.

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶¶ 20 (a), (b), and (g) apply. Applicant failed to timely file some of his federal income tax returns for tax years 2005-2011, 2013, and 2018. Some reasons were beyond his control, and had to do with health problems, and legal complications of getting needed documentation, or resolving filing disputes. He worked through the issues to resolve the delinquent filings. He has timely filed and paid his taxes since 2019. He does not owe the IRS any back taxes. Applicant's tax issues occurred long ago under circumstances unlikely to recur. He has established a sufficient track record of timely filings. His past untimely filed federal tax returns do not cast doubt on his current reliability, trustworthiness, and judgment. The financial considerations security concerns are mitigated.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern for criminal conduct:

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.

I have considered the disqualifying under AG ¶ 31 and the following are applicable in this case:

- (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; and
- (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.

I have considered the mitigating conditions under AG ¶ 32. The following 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; 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.

AG ¶¶ 32(a) and (d) apply. Applicant's last alcohol-related arrest was in 2012, and his last police related incident was in 2013. He has attended AA meetings consistently since 2011 and has changed his relationship with alcohol. He successfully completed probation and state mandated substance-abuse classes. He remains committed to being a law-abiding citizen and continuing his service to the nation through the defense industry.

He provided sufficient evidence for me to find that enough time has passed, the behavior is unlikely to recur, and these incidents no longer cast doubt on his reliability, trustworthiness, and judgment. He provided sufficient evidence for me to find his lifestyle and habits have changed and that he is rehabilitated. There has been sufficient passage of time, he successfully completed probation, and he has an excellent record of employment and community involvement. The criminal conduct security concerns are mitigated.

Guideline G, Alcohol Consumption

AG ¶ 21 details the personal conduct security 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.

I have considered the disqualifying conditions for alcohol consumption under AG ¶ 22 and the following are applicable:

- (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; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

I have considered the mitigating conditions under AG ¶ 23. 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 judgment; and

(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.

AG ¶¶ 23(a) and (b) apply. Applicant's last alcohol-related arrest was in 2012. He has attended AA meetings consistently since 2011, and has changed his relationship with alcohol, which has included periods of abstinence. He has successfully completed probation and state mandated substance abuse classes. Applicant has found that complete abstinence and all the dogma of the AA program are not helpful to him, but he has altered the program to meet his needs. His methodology is reasonable and has been successful for him. His age, health problems, and change of lifestyle have also contributed to changing his relationship with alcohol. He remains committed to continuing his service to the nation through the defense industry. He provided sufficient evidence to find that enough time has passed, the behavior is unlikely to recur, and these incidents no longer cast doubt on his reliability, trustworthiness, and judgment. He provided sufficient evidence to find that he acknowledged his pattern of maladaptive alcohol use, took actions to overcome the problem, and has demonstrated a clear pattern of modified consumption. The alcohol consumption security concerns are mitigated.

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(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 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 considered his military service, witness testimony, and performance documentation. I have incorporated my comments under Guidelines F, J, and G in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant has mitigated the financial considerations, criminal conduct, 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: FOR APPLICANT

Subparagraphs 1.a: For Applicant

Paragraph 2, Guideline J: FOR APPLICANT

Subparagraphs 2.a-2.f: For Applicant

Paragraph 3, Guideline G: FOR APPLICANT

Subparagraphs 3.a-3.b: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Ross D. Hyams
Administrative Judge