



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 17-02244

**Appearances**

For Government: Adrienne Driskill, Esquire, Department Counsel

For Applicant: *Pro se*

May 21, 2019

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**Decision**

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ROSS, Wilford H., Administrative Judge:

Applicant has approximately \$31,000 in past-due debts that he cannot, or will not, resolve. His drug use has been mitigated. Based on a review of the pleadings, testimony, and exhibits, national security eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on November 28, 2016. (Government Exhibit 1.) On July 25, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations) and H (Drug Involvement). 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

*National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense on or after June 8, 2017.

Applicant answered the SOR in writing (Answer) on August 14, 2017, with attachments and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 22, 2017. The case was assigned to me on January 4, 2018. Due to a family medical emergency the case was reassigned to another administrative judge on January 25, 2018. The case was reassigned to me on March 20, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on March 20, 2018. I convened the hearing as scheduled on May 3, 2018. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits A, B, D, E, H, K, L, and M. There are no Applicant Exhibits C, F, G, I, or J. Applicant's exhibits were also admitted without objection. Applicant requested the record remain open for submission of additional exhibits. He submitted Applicant Exhibits N and O, which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on May 11, 2018.

### **Findings of Fact**

Applicant is a 43-year-old software engineer. He is married to his second wife, and has a Bachelor of Science degree. He is seeking to obtain national security eligibility for a security clearance in connection with his work with the DoD.

Applicant has severe physical issues that have resulted in periods where he received disability while recovering. He was basically unemployed between 2005 and 2011 due to his physical issues. During that time he attended college. Applicant worked full time from 2013 to 2015, when he again went on disability. He was unemployed for about a year before obtaining work with his current employer in October 2016. He returned to disability in August 2017, and was on disability at the time of the hearing. He returned to work in June 2018. When on disability Applicant makes about 60% of his salary. Applicant contends his physical problems have caused the majority of his financial issues. (Government Exhibits 1 at Section 26, and 2; Applicant Exhibits L and N; Tr. 17-19, 26, 31-32, 35-36, 64-66.)

### **Paragraph 1 (Guideline F – Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has a history of past-due indebtedness that can raise questions about his reliability, trustworthiness, and ability to protect classified information.

Applicant admitted all the allegations set forth in the SOR with the exception of subparagraphs 1.b, 1.c, 1.g, and 1.x.<sup>1</sup> The total amount of money Applicant is alleged to owe is approximately \$31,000. The existence and amount of the debts is documented by credit reports dated March 24, 2017; and March 15, 2018. (Government Exhibits 4 and 5.) (See Government Exhibit 1 at Section 26.)

1.a. Applicant admitted filing for Chapter 7 bankruptcy in 2004. The debts included an automobile loan, medical bills, and student loans. Applicant received a discharge in bankruptcy on February 14, 2005. Given the length of time since Applicant filed this bankruptcy, I find that it has no current security significance and this allegation is found for Applicant. (Government Exhibit 3; Tr. 19, 30-31.)

1.b. Applicant denied he was indebted for past-due child support in the amount of \$5,369. Applicant submitted documentation showing that he had paid all the past-due child support and a lien filed by the county had been lifted. In addition, the credit reports show that Applicant's payments were timely and that he paid as agreed. This debt is resolved. (Answer; Government Exhibits 4 and 5; Applicant Exhibits B and D; Tr. 19-20, 34, 65-66.)

1.c. Applicant denied that he owed a creditor \$3,680 for a judgment from 2013. Attached to Applicant's Answer is a letter from the creditor, Applicant's landlord, stating that Applicant paid the balance that was due on this judgment. This debt is resolved. (Applicant Exhibit H; Tr. 20-21, 36.)

1.d. Applicant admitted owing a past-due medical debt in the amount of \$25. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 32-34, 66.)

1.e. Applicant admitted owing a past-due medical debt in the amount of \$834. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 32-34, 66.)

1.f. Applicant admitted owing a past-due medical debt in the amount of \$380. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 32-34, 66.)

1.g. Applicant denied owing a past-due medical debt in the amount of \$1,818, stating he had no knowledge of the account. Applicant admitted that it was his debt at the hearing, and that he has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 32-34, 40, 66.)

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<sup>1</sup> In Applicant's Answer he denied subparagraph 1.w. This was in error. He admitted 1.w and denied 1.x. The original Answer has been annotated to reflect this change. (Tr. 37-38.)

1.h. Applicant admitted owing a past-due commercial debt in the amount of \$105. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 38, 51, 66.)

1.i. Applicant admitted owing a past-due medical debt in the amount of \$120. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 32-34, 66.)

1.j. Applicant admitted owing a past-due medical debt in the amount of \$18. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 32-34, 66.)

1.k. Applicant admitted owing a past-due medical debt in the amount of \$43. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 32-34, 66.)

1.l. Applicant admitted owing a past-due commercial debt in the amount of \$190. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 66.)

1.m. Applicant admitted owing a past-due commercial debt in the amount of \$522. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 66.)

1.n. Applicant admitted owing a past-due commercial debt in the amount of \$608. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 66.)

1.o. Applicant admitted owing a past-due commercial debt in the amount of \$305. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 66.)

1.p. Applicant admitted owing a past-due commercial debt in the amount of \$960. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 66.)

1.q. Applicant admitted owing a past-due medical debt in the amount of \$235. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 32-34, 66.)

1.r. Applicant admitted owing this past-due automobile loan debt in the amount of \$10,005. Applicant submitted documentation showing that the creditor is garnishing Applicant's pay during the time he is working to pay the debt. This debt is being resolved through garnishment. (Applicant Exhibits E and O; Tr. 21-22, 39.)

1.s. Applicant admitted owing a past-due commercial debt in the amount of \$827. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 66.)

1.t. Applicant admitted owing a past-due medical debt in the amount of \$3,264. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 32-34, 66.)

1.u. Applicant admitted owing a past-due commercial debt in the amount of \$400. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 66.)

1.v. Applicant admitted owing a past-due commercial debt in the amount of \$150. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 66.)

1.w. Applicant admitted owing a past-due medical debt in the amount of \$254. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 32-34, 66.)

1.x. Applicant denied owing a past-due debt for school tuition for his daughter in the amount of \$839. Applicant admitted this debt at the hearing, but also said that he has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 37-38, 40-41.)

1.y. Applicant admitted owing a past-due debt for a delinquent library book in the amount of \$58. Applicant has not made any payments on this past-due indebtedness, and has no current plans to pay this past-due indebtedness. This debt is not resolved. (Tr. 23, 40, 66.)

Applicant had not received any kind of financial counseling to help him prepare a budget or otherwise help him resolve his debts. He did not have a plan to resolve his debts, and until he returned to work full time he did not intend to prepare one. (Tr. 45, 66.)

## **Paragraph 2 (Guideline H – Drug Involvement and Substance Misuse)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has used illegal drugs. Applicant admitted all three allegations under this paragraph.

2.a and 2.b. Applicant purchased marijuana once, and used it several times during a single month in 2013. At that time Applicant was in severe pain from his knee and back, and prescription painkillers were not working for him. He used marijuana between two and four times during that period. The marijuana did nothing for his pain, so he stopped

using it. (Government Exhibits 1 at Section 23, and 2; Applicant Exhibit K; Tr. 24-25, 52-58.)

2.c. Applicant began having seizures in 2015. He did research that indicated ingesting marijuana or pills that contained tetrahydrocannabinol (THC), the active ingredient in marijuana, would possibly help stop the seizures. At that time he consumed several THC pills that were prescribed for someone else. The pills were unsuccessful in stopping his seizures, so he stopped using them. (Government Exhibits 1 at Section 23, and 2; Applicant Exhibit K; Tr. 25, 58-62.)

Applicant had not used illegal drugs since 2015 and has no intention of using illegal drugs in the future. As of the date of the hearing he was not taking any pain medication, or other medication. (Tr. 60-63.)

### **Policies**

When evaluating an applicant's national security eligibility for a security clearance, 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 F – Financial Considerations)**

The security concern relating to the guideline 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 personal 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;
- (b) unwillingness to satisfy debts regardless of ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant, based on the evidence, had 24 delinquent accounts that he could not or chose not to resolve. These debts have been in existence for a considerable period of time. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline includes 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.

The evidence does not establish that any of the above mitigating conditions apply to Applicant's case, with several exceptions. As stated, subparagraphs 1.a, b, c, and r are found for Applicant. With regard to AG ¶ 20(b), Applicant has had a long history of medical ailments that have obviously affected his finances in a detrimental way. However, there is little evidence that Applicant has acted responsibly to try and resolve his debts. He still owes a considerable amount of money, and has no plan about how to pay it off. Applicant did not even pay the smallest debts, for \$18 and \$25. He failed to submit evidence that would tend to support any of the other mitigating conditions. There is no basis for me to find that Applicant has mitigated the security concerns arising from his financial situation. Paragraph 1 is found against Applicant.

## **Paragraph 2 (Guideline H – Drug Involvement and Substance Misuse)**

The security concern relating to Drug Involvement and Substance Misuse is set forth in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as



defined in 21 U.S.C. §802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia.

Applicant purchased and used marijuana for a brief time in 2013. He used THC pills for a brief time in 2015. Both of the stated disqualifying conditions apply.

The following mitigating conditions under AG ¶ 26 have also been considered:

- (a) the behavior happened so long ago, was so infrequent, or happened under such 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 drug-involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used; and
- (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant has had severe pain issues, and a history of seizures. The drug use was a misguided attempt by him to resolve those medical issues after other treatment had failed. The use of marijuana and THC pills was unsuccessful, Applicant realized it and stopped the conduct, and credibly stated he would not use illegal drugs again in the future. Applicant has mitigated the security significance of his past drug use. Paragraph 2 is found for Applicant.

## 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has not mitigated the security concern caused by his significant financial difficulties. Overall, the record evidence does create substantial doubt as to Applicant's present 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 F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant

Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant

Paragraph 2, Guideline H:

FOR APPLICANT

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For 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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge