



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



In the matter of: )  
 )  
 ) ISCR Case No. 12-04796  
 )  
Applicant for Security Clearance )

**Appearances**

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

10/30/2014

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the concerns raised by his \$8,100 in unresolved delinquent debt and his multiple failures to disclose adverse information to the government during his 2007 and 2011 security clearance adjudications. Clearance is denied.

**Statement of the Case**

On March 14, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations and personal conduct guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly

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<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing. At the hearing on August 20, 2014, I admitted Government's Exhibits (GE) 1 through 9, without objection. I also appended to the record as Hearing Exhibit (HE) I, a Person Summary from the Joint Personnel Adjudication System. During the hearing an issue was raised about the adjudication of Applicant's 2007 security clearance application. Because neither Department Counsel nor Applicant was able to resolve the issue, I, *sua sponte*, obtained a copy of Applicant's Security Investigation Index (SII), which shows his investigative history with agencies outside the DOD. The SII Summary is attached to the record as HE II. After the hearing, Applicant submitted Applicant's Exhibit (AE) A, which was also admitted without objection.<sup>2</sup> I received the transcript (Tr.) on August 29, 2014.

### **Findings of Fact**

Applicant, 27, has worked in security for a federal contractor since 2007. Applicant began living on his own and supporting himself at 19 years old. He began his professional career in retail stores. Between 2005 and 2006, Applicant worked as a sales associate at a national superstore chain. Shortly after obtaining a counter manager position, Applicant was terminated for violating the store's overtime policy. Applicant complained to his supervisor that he could not complete the closing tasks during his shift without help from another associate. Because his supervisor was unwilling to provide additional staff, Applicant continued to work overtime to complete the tasks despite being warned not to do so. In January 2007, Applicant quit his job at a department store after being told that he was being fired. On two separate occasions during his probation period, co-workers accused Applicant of stealing personal items from them.<sup>3</sup>

After Applicant began working for his current employer, he completed a DOD Standard Form 86 (SF-86) application in November 2007 to obtain a security clearance from another government agency. In response to questions about his employment record,<sup>4</sup> Applicant did not disclose the unfavorable circumstances surrounding the termination of his employment with the department store earlier that year. Applicant also did not disclose 2004 and 2006 criminal incidents in response to questions about his police record.<sup>5</sup> After the 2004 incident for petty theft, which occurred when Applicant

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<sup>2</sup> The Government's response to Applicant's post-hearing submission is appended to the record as HE III.

<sup>3</sup> Tr. 20, 59-63; GE 1, GE 3; HE II.

<sup>4</sup> Section 22: Your Employment Record. Has any of the following happened to you in the last 7 years? 1. Fired from a job. 2. Quit a job after being told you are being fired. 3. Left a job by mutual agreement following allegations of misconduct. 4. Let a job by mutual agreement following allegations of unsatisfactory performance. 5. Left a job for other reasons under unfavorable circumstances.

<sup>5</sup> Section 23: Your Police Record. For this item, report information whether the record in your case has been "sealed" or otherwise stricken from the court record. The single exception to this requirement is for

was 16 years old, he completed a juvenile diversion program. The 2006 incident resulted from his failure to appear at a court date related to a traffic violation.<sup>6</sup>

Applicant offered several reasons for his omissions. He did not believe he was required to disclose the termination from the department store because he quit. Applicant did not believe that he had to disclose the criminal incidents because they occurred when he was a minor, even though the questions on the security clearance application did not provide for such a reporting exclusion. Applicant also cites a July 2007 clearance letter from his local police department saying they did not have any arrest records for him. The letter was based on Applicant's assertion that he had lived in the jurisdiction for one year and five months as opposed to the six and a half years he actually resided in the community. Despite his omissions, the other government agency favorably adjudicated Applicant's security clearance in September 2008.<sup>7</sup>

In conjunction with his promotion to his current position, Applicant applied for a security clearance from the DOD, completing another SF-86 in November 2011. In January 2012, a background investigator interviewed Applicant at his employer's office. During the interview, the investigator went through each question on the security clearance application with Applicant, who confirmed his answers. He did not update or provide any new information. Having not reported any adverse financial information in response to the financial record questions,<sup>8</sup> the investigator questioned Applicant about

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certain conviction under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18. U.S.C. 3607. A. Have you ever been charged with or convicted of any felony offense? (Include those under the Uniform Code of Military Justice) B. Have you ever been charged with or convicted of a firearms or explosive offenses? C. Are there currently any charges pending against you for any criminal offense? D. Have you ever been charged with or convicted of any offense(s) related to drugs or alcohol? E. In the last 7 years, have you been subject to court martial or other disciplinary proceedings under the Uniform Code of Military Justice? (Include non-judicial, Captain's mast, etc.) F. In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in respond to A, B, C, D, or E, above? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.)

<sup>6</sup> Tr. 66-67, 74-76; GE 2.

<sup>7</sup> Tr. 46-49, 72-77; GE 3; HE II; Answer.

<sup>8</sup> Section 26. Financial Record.... Delinquency Involving Routine Accounts. Other than previously listed, has any of the following happened? In the past seven (7) years [have] you: Had any possessions or property voluntarily or involuntarily repossessed or foreclosed? (Include any financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor); Defaulted on any type of loan? (Include any financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor); Had bills or debts turned over to a collection agency? (Include financial obligation for which you were the sole creditor as well as those for which you were a cosigner or guarantor); Had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (Include financial obligations for which you were the sole debtor as well as those for which you were a cosigner or guarantor); [Been] evicted for non-payment?; Had your wages, benefits, or assets garnished or attached for any reason? [Been] over 120 days delinquent on any debt not previously entered? (Include any financial obligation for which you are the sole debtor as well as those for which you are a cosigner or guarantor; You are currently over 120 days delinquent on any debt? (Include any debt for which you are the sole debtor as well as those for which you were a cosigner or guarantor.)

six delinquent consumer accounts, a 2006 car repossession, and a 2008 garnishment that were discovered during the routine credit check.<sup>9</sup>

Applicant told the investigator that he did not know why he failed to disclose the delinquent accounts. At hearing, Applicant testified that he did not disclose derogatory financial information because he did not understand the questions. He also stated that he did not believe he needed to disclose paid collection accounts. Although the garnishment was resolved before Applicant completed the November 2011 security clearance application, three of the collection accounts were not resolved until 2012. The two remaining consumer accounts (SOR ¶¶ 1.a. and 1.c, for \$3,701 and \$755, respectively) and the \$3,690 car repossession deficiency balance (SOR ¶ 1.b) remain unpaid. Applicant notes that three accounts, which became delinquent between January and May 2007 do not appear on his most recent credit reports. Despite being consistently employed since 2007, Applicant has not taken any steps to contact the creditors or resolve these delinquent debts. Applicant testified that he has focused his attention on resolving his other debts, but plans to pay the remaining delinquent accounts when he becomes more financially stable. Applicant currently lives within his means. He has not incurred any new delinquent debts. He has approximately \$700 in monthly disposable income.<sup>10</sup>

In February 2012, the investigator interviewed Applicant a second time to discuss an arrest for driving under the influence (DUI) of alcohol that occurred in December 2011, in between Applicant's completion of his security clearance application and his first background interview. Applicant was pulled over during a routine traffic stop. His blood alcohol level measured .10%. After receiving his *Miranda* rights, the police transported Applicant to a detoxification center where he was held for five hours before being released. Ten days before his first background interview, Applicant was arraigned, entering a not guilty plea on the DUI charge. He was also assigned a public defender and given an April 2012 court date. Applicant told the investigator and reiterated at the hearing that he did not mention the incident during his January 2012 interview because he did not believe he had been arrested or charged with any crime. Applicant eventually pleaded no contest to a reduced charge. The court ordered Applicant to complete a first offender program and pay a \$1,500 fine.<sup>11</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an Applicant's eligibility for access to classified information.

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<sup>9</sup> Tr. 51, 63-65; GE 1, GE 5-6.

<sup>10</sup> Tr. 25-37, 43-46, 77-82, 85-86; GE 3, GE 8; AE A.

<sup>11</sup> Tr. 39-41, 52, 55-56, 83-84, 86; GE 3.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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 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 protect 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 Executive Order 10865 provides that 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**

### **Personal Conduct**

An applicant’s personal conduct becomes a concern when his actions show questionable judgment, an unwillingness to comply with rules or regulations, or raises questions about an applicant’s ability to protect classified information.<sup>12</sup> The SOR alleges that Applicant’s termination from a retail job in 2006 (SOR ¶ 2.g), the circumstances surrounding his quitting another retail job in 2007 (SOR ¶ 2.h), and a December 2011 DUI arrest (SOR ¶ 2.a) exemplify these concerns and together support a negative whole-person assessment, indicating that Applicant may not properly handle or safeguard classified information. They do not. Applicant has maintained a positive employment history since he began his current employment in 2007. The employment issues he experienced as a 19 year old do not have any bearing on his current security worthiness. While Applicant’s December 2011 DUI is a serious offense, it is an isolated incident that is not indicative of alcohol-related issues. The underlying act, which occurred almost four years ago, was a mistake and does not raise security concerns. However, Applicant’s subsequent failure to report the incident does, as discussed below.

An applicant’s failure to provide truthful and candid answers during the security clearance process raises issues about his reliability and trustworthiness that ultimately

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<sup>12</sup> See AG ¶15.

calls into question his ability to protect classified information.<sup>13</sup> The SOR alleges that Applicant has a history of failing to disclose negative information to the government. Specifically, the SOR alleges that: (1) Applicant falsified material facts on his November 2007 security clearance application by failing to disclose adverse information regarding his employment and police records (SOR ¶¶ 2.d, 2.e); (2) Applicant falsified material facts on his November 2011 security clearance application by failing to disclose a car repossession and five delinquent accounts in response to questions about his financial record (SOR ¶¶ 2.b and 2.c); and (3) Applicant failed to disclose his December 2011 DUI arrest during his January 2012 background interview (SOR ¶ 2.f). Applicant denies having any intent to deceive or mislead the government and provides conflicting explanations to justify his omissions — none of which are credible.

The language used in the questions Applicant falsified on his November 2007 and November 2011 security clearance applications is clear and unambiguous. A reasonable person reading the same questions would have disclosed the unfavorable employment, criminal, and financial information Applicant chose to withhold. Also, Applicant's claims that he did not understand that he was arrested and charged with crimes in 2004, 2006, and in December 2011 are disingenuous. During the course of the adjudication, Applicant has provided enough information about each event tending to show that he understood that he was either arrested or charged with criminal conduct in each instance. As such, the record contains sufficient evidence to find that Applicant deliberately omitted relevant facts from his 2007 and 2011 security clearance applications and that he deliberately provided false and misleading information concerning relevant facts to the investigator during his January 2012 background interview.<sup>14</sup>

Making false or misleading statements to the federal government during the security-clearance process is serious misconduct, and it is not easily explained away, excused, or mitigated. At no point during the 2011 adjudication did Applicant try to correct any of the misleading information he provided. Given the extent of Applicant's falsifications, his actions cannot be considered minor. His actions undermine the security clearance process, which depends in part on honest self-reporting by applicants. Applicant's earlier falsifications are not mitigated because he received a favorable adjudication from another government agency. Nor does this fact mean his earlier falsifications are not relevant to a determination of his current security worthiness. An applicant is expected to provide full, frank, and candid answers throughout the investigative process. Anything less provides a rational basis for a finding against an applicant's security worthiness. Applicant has established a pattern of conduct that shows he cannot be relied upon to self-report adverse information. None of the personal conduct mitigating conditions apply.

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<sup>13</sup> See AG ¶ 15.

<sup>14</sup> AG ¶¶ 16(a) and (b).

## Financial Considerations

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”<sup>15</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. The SOR alleges that Applicant is indebted to three creditors for approximately \$8,100. He has demonstrated a history of unresolved debt and unwillingness to repay his creditors.<sup>16</sup> Although Applicant incurred the debt at a young age and before he obtained steady employment, he has not taken any steps in the seven years he has been gainfully employed to address any of these debts. Instead he relies on the fact that the debts no longer appear on his credit report and may be uncollectible. While the debts may not be a source of vulnerability for Applicant, his decision to not pay his debts casts doubts on his current security worthiness. None of the relevant mitigating conditions apply.

## Whole-Person Concept

I have significant reservations about Applicant’s current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2. The purpose of the security clearance adjudication is to make “an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.”<sup>17</sup> In these cases, the degree of acceptable risk is less than that acceptable to mere access to employment.<sup>18</sup> Applicant may well be an acceptable employee, but his lack of candor with the government during his 2007 and 2011 security clearance adjudications and his financial irresponsibility raise ongoing concerns about his trustworthiness and reliability that must be resolved in favor of the Government.

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<sup>15</sup> AG ¶ 18.

<sup>16</sup> AG ¶¶ 19 (a) and (c).

<sup>17</sup> AG ¶ 2(a).

<sup>18</sup> See *Gayer v. Schlesinger*, 490 F.2d 740, 750 (D.C. Cir. 1973).

### **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, Financial Considerations:                      AGAINST APPLICANT

    Subparagraph 1.a – 1.c:                                      Against Applicant

Paragraph 2, Personal Conduct:                              AGAINST APPLICANT

    Subparagraphs 2.a, 2.g-2.h:                              For Applicant

    Subparagraphs 2.b – 2.f:                                      Against Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge