



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-10676
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro se*

March 14, 2014

\_\_\_\_\_

**Decision**

\_\_\_\_\_

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant had five delinquent debts, totaling \$106,017, identified on the Statement of Reasons (SOR). Applicant refinanced one debt and it is now in good standing. One debt was forgiven by the creditor. One delinquent account was listed on the SOR twice. Applicant made a single payment on it in January 2014. One debt remains unaddressed. Additionally, security concerns were raised under the Guideline for Personal Conduct regarding Applicant’s security clearance denial in 2011, in part relating to his 2008 felony conviction and falsifications during his February 26, 2009 security clearance interview. Applicant failed to mitigate the financial and personal conduct concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted his electronic Security Clearance Application (e-QIP) on June 18, 2013. On October 17, 2013, the Department of Defense issued a Statement of Reasons to Applicant detailing security concerns under the guideline for Financial Considerations. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective after September 1, 2006.

Applicant answered the SOR (Answer) on November 5, 2013, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 14, 2014, Department Counsel issued Applicant an Amendment to the SOR detailing additional security concerns under the guideline for Personal Conduct. Applicant answered the Amendment to the SOR on January 20, 2014. The case was assigned to me on January 21, 2014. A notice of hearing was issued to Applicant on January 21, 2014, scheduling a hearing for February 11, 2014. The hearing was convened as scheduled via video teleconference. The Government offered Exhibits (GE) 1 through 10, which were admitted without objection. Applicant testified on his own behalf, called one witness, and offered Applicant's Exhibits (AE) A through DD, which were admitted into the record without objection. Applicant requested that the record be left open to allow him to submit additional evidence and his request was granted. On February 14, 2014, Applicant presented additional exhibits, marked AE EE through AE PP.<sup>1</sup> Department Counsel had no objection to AE EE through AE PP, and they were admitted into the record. The record then closed. DOHA received the transcript of the hearing (Tr.) on February 21, 2014.

## **Procedural Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of a state statute. The statute was not admitted into evidence but was included in the record as Hearing Exhibit I (HE I), and administrative notice was taken of it.

### **Motion to Amend the SOR**

At the hearing on February 11, 2014, Department Counsel made a motion to amend the SOR, in order to conform to the evidence, by adding ¶ 2.a, pursuant to Directive ¶ E3.1.6. This allegation was contained in the Amendment to the SOR sent to Applicant January 14, 2014. Applicant had no objections to the amendment and previously admitted these allegations in his January 20, 2014 Answer. The motion to amend was granted. (Tr. 13-14.) The additional allegations are as follows:

2. Guideline E: 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. Available information raising this concern shows that:

---

<sup>1</sup> Applicant's post-hearing submission was lettered AE CC through AE NN. I renamed the documents to avoid duplicating AE CC and AE DD.

- a. You were issued a Statement of [R]easons dated May 7, 2010, which contained allegations of criminal conduct and willful false statements of material fact. After a hearing the Administrative Judge found the following allegation[s] to be true:
  - i. You were arrested in about [date omitted] in [city and state omitted], and charged with (1) Possession of Marijuana for Sale, a felony, (2) Cultivating Marijuana, a felony, (3) Tampering With Electric, Telephone, and Cable Television, a felony, and (4) Injuring or Interfering With Electric Lines, a felony. You pleaded guilty to Count (1) and to a reduced charge of Count (2) and were sentenced to three years probation to expire February 2012, two days jail with credit of time served, pay restitution, community service, and fined. Counts (3) and (4) were dismissed.
  - ii. In a February 26, 2009 interview with an authorized investigator with the Department of Defense, you falsified material facts in that you stated that you had no idea what your renter was involved with at your rental property, you had never seen the cultivating of marijuana, and you had failed to notice that the tenant had tapped into the electric box of surrounding neighbors; whereas in truth, you deliberately failed to disclose that you knew your tenant was growing marijuana in your rental property and that the electrical box had been tampered with, as set forth above.

The Administrative Judge reached an unfavorable determination in your case, based on evidence adduced at your November 30, 2010 hearing. He concluded in his June 15, 2011 Determination that in light of your continuing inconsistencies, there is some doubt as to your current reliability, trustworthiness, or good judgment.

### **Findings of Fact**

Applicant is 37 years old. He joined the Marine Corps Reserve in 1994. He was on active duty from June 2004 to February 2006. He was deployed to an overseas war zone from March to October 2005. He again served on active duty from February 2007 to September 2008. In June 2009 Applicant resigned his commission (he was a chief warrant officer-2) and was administratively discharged under other-than-honorable conditions. He has been employed with a government contractor since 2000. He seeks a security clearance in connection with his employment. (GE 3; GE 5; Tr. 39-42, 69, 73.)

Applicant possesses both bachelor's and master's degrees. He was married from 2001 to 2005. His first marriage ended in divorce. He married his second wife in September 2011. He has a daughter, age 16, from a prior relationship, and a one-year-old son with his second wife. (GE 3; GE 5; Tr. 39-42, 66.)

The Government alleged that Applicant is ineligible for a clearance because he made decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR identified financial concerns including five delinquent debts totaling \$106,017. Applicant's debts appear in credit reports entered into evidence. Personal Conduct security concerns arose out of a 2011 denial of Applicant's application for a security clearance based in part on Applicant's October 2008 criminal conviction and subsequent falsification of a February 2009 interview with an authorized investigator for the Department of Defense relating to the circumstances of his criminal conviction. Applicant admitted SOR subparagraphs 1.a, 1.c through 1.e., and 2.a. He denied subparagraph 1.b. (Answer; GE 1; GE 2; GE 4; GE 6; GE 8; GE 10; Tr. 13-14.)

In 2003, Applicant purchased a condominium [property A] for \$245,000. He initially financed the entire purchase with a single, 30-year fixed-rate mortgage. However, he refinanced the purchase and took out a home equity line of credit (HELOC) on the property. Property A is his current residence. SOR allegation 1.b, a delinquency of \$18,046 on a total debt of \$283,085, pertains to the primary mortgage for property A. Applicant produced documentation that shows he modified this loan in October 2013 and has been current on his payments since the bank approved the modification. The HELOC on property A is described in SOR allegation 1.a, and is identified as having a delinquency of \$33,897 on a total debt of \$35,500.<sup>2</sup> This debt has been delinquent since at least June 2011. Applicant made a \$3,000 payment toward this debt on January 16, 2014, "as a token of good faith" but has not come to an agreement with this creditor to make future payments. (GE 10; AE DD; AE EE; AE FF; AE GG; AE HH; Tr. 41-49, 59-60.)

In December 2005 Applicant purchased an investment property [property B] for \$420,000. He purchased a second investment property [property C] for \$500,000 in January 2007. He rented out both property B and property C to tenants. (Tr. 39-43, 53-55.)

Applicant testified that he had difficulties renting property C for the first three months after he purchased the property. His friend knew a potential tenant and arranged for that individual to lease the premises.<sup>3</sup> The tenant illegally cultivated marijuana at the property. Applicant admitted at hearing that he was aware that marijuana was being grown on the property from both the odor of the marijuana and a "big, like a box, shed thing, in the garage," beginning approximately the second month of the lease. He failed to evict the tenant or report the marijuana cultivation to authorities. In October 2008 Applicant was arrested and charged with: (1) Possession of Marijuana for Sale, a felony; (2) Cultivating Marijuana, a felony; (3) Tampering With Electric, Telephone, and Cable Television, a felony; and (4) Injuring or Interfering With Electric Lines, a felony. He pled guilty to Count (1) and to a reduced misdemeanor-level

---

<sup>2</sup> The debt identified in SOR subparagraph 1.c is for the same amount and uses the same partial account number. It is found to be a duplicate of SOR subparagraph 1.a.

<sup>3</sup> Applicant reported in his July 2, 2013 Personal Subject Interview that he found the tenants through Craigslist. (GE 7.)

charge of Count (2). Counts (3) and (4) were dismissed. He was sentenced to three years of probation, which expired February 2012; served two days in jail (with credit for time served); paid restitution; performed community service; and paid fines. On May 16, 2012, he petitioned the Superior Court of his state to withdraw his plea. The Court granted Applicant's Petition. It dismissed Count (1) and Count (2) was expunged from Applicant's record. (HE I; GE 1; GE 2; GE 5; AE A; Tr. 53-57.)

In February 2009, Applicant was apparently interviewed by an authorized investigator of the Department of Defense, although Department Counsel failed to enter documentation of that interview into evidence. In that interview, Applicant allegedly denied knowledge of his tenant's illegal activities. Based in part on this evidence adduced at a security clearance determination hearing held November 30, 2010, an administrative judge from DOHA concluded in a written decision dated June 15, 2011, that Applicant's eligibility for access to classified information should be denied. Applicant admitted in his testimony on February 11, 2014, that he falsified the facts during his February 2009 interview with an authorized investigator of the Department of Defense and during his testimony to the other administrative judge in November 2010. He explained that his falsifications were due to not "thinking straight." (GE 1; GE 2; GE 5; Tr. 57.)

Due to the high level of defense legal fees from his criminal court case, along with the costs involved in maintaining his rental properties and a decline in the economy, Applicant found himself financially overwhelmed. In December 2009 he short sold property B. He does not owe anything further towards the mortgages on that home. Similarly, in March 2010 Applicant stopped making his mortgage payments on property C. It was sold through a bank-approved short sale in March 2012. Applicant no longer is liable for any debt related to property C. (GE 5; Tr. 50, 64-65.)

Applicant has two delinquent credit cards that he used to maintain properties B and C. The first credit card was delinquent in the amount of \$9,181, as alleged in subparagraph 1.d. This account had been delinquent since October 2012. Applicant produced a letter from this creditor, dated January 17, 2014, which indicated this creditor "will no longer attempt to collect the unpaid debt" and issued Applicant a "1099-C Cancellation of Debt" for this account. This debt is resolved. The second, in allegation 1.e, is a credit card debt of \$10,996, and it remains delinquent. It has been delinquent since January 2009. Applicant testified that he is attempting to negotiate this debt with the creditor but has not yet resolved this account. He produced documentation that he has resolved two other credit card debts that were not alleged on the SOR. He is current on his student loans. (GE 10; AE W; AE X; AE BB; AE II; Tr. 49-52, 62-64.)

Applicant's Personal Financial Statement, completed on February 6, 2014, shows that he has a remainder of \$2,422 after he satisfies his monthly expenses. He identified assets of \$30,000 including \$5,000 of bank savings and three vehicles. (AE V.)

Applicant testified that he has significantly changed his life since his criminal incidents and falsifications. He expressed remorse for his prior criminal activities. He

earned his master's degree in 2010. He underwent six counseling sessions with a licensed psychologist in 2008 and 2009. His psychologist opined that Applicant achieved his "presenting goal" of getting "back on the straight and narrow." In 2013 Applicant sought treatment for stress management with a licensed "mental health social worker." He is attended an eight-week class in "Mantram Repetition." He testified he is now focused on being "the best father, husband, and citizen that [he] can be." (AE Y; AE OO; AE PP; Tr. 66-73.)

One witness spoke on his behalf and others wrote letters of support. They noted that Applicant is respected for his honesty, trustworthiness, and integrity by his professional contacts. His performance appraisals reflect he is a valued employee and that he exceeds performance expectations. He has received a number of awards and certificates in recognition of his job performance and valuable contributions to his company. He presented a number of emails from coworkers and professional contacts that recognized his hard work and dedication. (AE B through AE U; AE Z; AE AA; AE JJ through AE NN; Tr. 76-87.)

### **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 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor of national security." In reaching the decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. The 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 as to 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 or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

The SOR alleges that Applicant incurred approximately \$106,017 in delinquent debt. Applicant modified the refinanced loan described in allegation 1.b, and is now in good standing on that \$283,085 mortgage. The delinquent credit card debt in allegation 1.d was forgiven by the creditor after Applicant failed to satisfy it for several years. Applicant made a single payment in January 2014 on the delinquent debt identified in allegation 1.a (and duplicated in 1.c), but has not reached a repayment agreement with this creditor. Allegation 1.e, a credit card delinquency of \$10,996, is his oldest debt and has been unaddressed since 2009. In its entirety, the Government has established its *prima facie* case against Applicant. The evidence shows Applicant has an “unwillingness to satisfy” his delinquent accounts, given his monthly remainder. He has an overall “history of not meeting financial obligations.”

Four Financial Considerations mitigating conditions under AG ¶ 20 were considered, but found inapplicable, including:

(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), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts were caused, in significant part, by his criminal conduct. Therefore, the conditions that resulted in the financial problem were not largely beyond Applicant's control. He failed to articulate why he had waited until the month prior to the hearing to make a \$3,000 payment on the debt alleged in 1.a. and he failed to document his efforts to further resolve that debt. While the debt in 1.d is resolved by the creditor's forgiveness of the debt, Applicant did not act responsibly or demonstrate a good-faith effort to repay it. Accordingly, resulting concerns under AG ¶ 19(c) remain unmitigated. The debt alleged in 1.e has not been resolved. His financial delinquencies are ongoing. He has no concrete plan to address his two remaining delinquencies, which total approximately \$40,000, despite his significant monthly remainder. While Applicant receives some credit for the mitigating evidence including, but not limited to, the modification of his mortgage loan on property A and maintaining two credit cards in good standing, the mitigating evidence presented is not sufficient to overcome the concerns raised by his conduct.

The Appeal Board has held, "A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."<sup>4</sup> Security clearance adjudications regarding financial issues are not debt collection proceedings. Rather, the purpose 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>5</sup> Applicant's ongoing decision not to address his remaining debt in a meaningful manner reflects poorly on his current judgment, reliability, trustworthiness, and ability to protect classified information. I cannot find that financial problems are unlikely to recur. He has

---

<sup>4</sup> ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003).

<sup>5</sup> AG ¶ 2(a)



not established that the problem is being resolved or is under control, or that he made a good faith effort to repay his remaining delinquent accounts. None of the mitigating conditions were sufficiently established by the record evidence with respect to those debts and the financial history of which they are symptomatic.

### **Guideline E, Personal Conduct**

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 person may not properly safeguard protected information.

The Government alleged that the June 15, 2011 unfavorable security clearance decision by a DOHA administrative judge raises concerns in connection with Applicant's present application for a security clearance. That adverse decision was based, in part, on Applicant's October 2008 arrest and subsequent conviction, and his February 26, 2009 falsification. The Government did not allege the underlying conduct as raising specific concerns at present. The previous adverse decision is not per se disqualifying, since Directive ¶¶ E3.1.37 through E3.1.40 permit reapplication at least one year after a final unfavorable clearance decision. However, when taken as a whole, Applicant's admitted past criminal and personal conduct, which led to his disqualification from possessing a security clearance in 2011, is inherently connected with his financial problems, discussed above. This credible adverse information is properly considered, as a whole, under Guideline E. It supports a whole-person assessment that Applicant's recent history indicates he may continue to exercise questionable judgment, untrustworthiness, unreliability, lack of candor, and unwillingness to comply with rules and regulations; and therefore may not properly safeguard protected information. AG ¶ 16(c) applies.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant pointed to achievements like receiving his master's degree in 2010 and his counseling in 2008 and 2009 as mitigation. Yet, at his November 30, 2010 hearing, which occurred after his treatment with the psychologist and after he achieved his master's degree, he was not fully truthful with the administrative judge. He also cited more recent therapy with a licensed social worker. He offered volumes of character evidence that averred he is an honest, reliable, and valued employee. Yet during 2013 and through his latest hearing, the details of his explanations continue to be inconsistent. For instance, in the July 2, 2013 Personal Subject Interview, he indicated that he found the property C marijuana-growing tenants through Craigslist, but he testified at hearing in February 2014 that a friend introduced him to those tenants.

Applicant bears the burden to show that the Government's concerns have been mitigated. He has not established that the factors that led to the denial of his clearance in 2011 happened under unique circumstances or that they are unlikely to recur. His veracity remains in question and he potentially remains vulnerable to exploitation, manipulation, or duress.

### **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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a hardworking and dedicated employee who performs well on the job. He failed to produce sufficient documentation that his remaining delinquent debts have been addressed or are otherwise being satisfied in a responsible manner. His veracity and personal conduct are still in question. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations or Personal Conduct 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Jennifer I. Goldstein  
Administrative Judge