



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-01234
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

12/08/2015

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns, but failed to mitigate the personal conduct security concerns. Clearance is denied.

**Statement of the Case**

On October 27, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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 adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR, admitting all of the Guideline F allegations. He neither admitted nor denied the Guideline E allegations. Based upon the tenor of the responses, I have construed them as denials. Applicant requested a hearing,

whereupon the case was assigned to me on June 8, 2015. On July 31, 2015 the Defense Office of Hearings and Appeals issued a notice of hearing scheduling the case for August 24, 2015.

At the hearing, I received nine Government exhibits marked and identified as Government Exhibits (GE) 1 through 9, and I received 22 Applicant exhibits that I marked and identified as Applicant Exhibits (AE) A through V. Also, I considered the testimony of Applicant. DOHA received the transcript (Tr.) on September 1, 2015.

### **Procedural Ruling**

SOR subparagraph 2.b reads, as follows:

You falsified material facts on an Electronic Questionnaires for Investigations Processing (SF85-P format), executed by you on June 7, 2011, when in response to “**Section 23: Illegal Drugs** In the last 7 years . . . have you illegally used any controlled substance, for example, marijuana . . . ?” You answered “No,” whereas you knew then and intentionally sought to conceal that you had illegally used marijuana from 2001 to at least 2005.

Department Counsel moved to amend subparagraph 2.b by replacing all of the language following “in response to . . . “ and replacing it with the following:

**Section 21: Illegal Drugs** In the last 7 years, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis, for your own intended profit or that of another? You answered “No,” whereas you knew then and intentionally sought to conceal that you had illegally purchased marijuana from 2001 to at least 2005.

In support of her motion, Department Counsel asserted that Applicant did not falsify Section 21 of the security clearance application and argued that Section 23 was “the only applicable question if [the Government] is going to allege a 2011 falsification,” (Tr. 81) I denied the motion. I resolve SOR subparagraph 2.b in Applicant’s favor, and will not address it further.

### **Findings of Fact**

Applicant is a 33-year-old single man with an infant child. (Tr. 24) He is engaged to his significant other. He earned a bachelor of science degree in 2009. (Tr. 24) Since graduating from college, he has worked in the field of protective services. (Tr. 24) For the past three years, he has worked for a defense contractor as the captain of a building security detail. In this capacity, he is in charge of all of the facility’s security operations, and he supervises 30 officers. (Tr. 25)

The SOR lists 16 delinquent debts, totalling approximately \$70,000. Nearly all of these debts became delinquent in 2011 after Applicant experienced a six-month period of unemployment. (GE 1 at 15; Tr. 35)

SOR subparagraph 1.a totals \$618. It stems from a breach of lease penalty Applicant incurred in 2009 after moving from his apartment before the lease expired.<sup>1</sup> (Tr. 62) Applicant satisfied this debt in April 2015. (AE K)

SOR subparagraph 1.b totals \$51. This is a medical bill that Applicant incurred in 2011 after he ruptured his Achilles' heel. Using his 2014 income tax refund, Applicant satisfied this debt. (Tr. 27)

SOR subparagraphs 1.c, 1.d, 1.g, and 1.h are student loans, totalling approximately \$41,000. In April 2015, Applicant began consolidating these debts. (AE O - AE R) Since then, he has been making \$45 payments consistent with the repayment agreement. (AE Q)

SOR subparagraphs 1.e, totalling \$6,496, and 1.f, totalling \$687, constitute overpayments for unemployment benefits that Applicant received in 2011. (Tr. 29) As of April 2015, Applicant had paid the debt listed in SOR subparagraph 1.f in its entirety, and had reached an agreement with the state that he would repay the debt listed in SOR subparagraph 1.e with \$100 monthly payments, beginning that month. (AE T) He has been making payments consistent with this agreement, since then. (AE U)

Subparagraph 1.i, totalling \$38, is a fine for overdue library books. Applicant satisfied it using his 2014 income tax refund. (Tr. 30)

SOR subparagraph 1.j is a delinquent credit card with a \$13,478 balance. In July 2015, Applicant contacted the creditor and arranged to satisfy this debt in \$60 monthly increments. (AE B) Since October 2014, he has been making payments, consistent with the agreement. (Tr. 59)

SOR subparagraph 1.k is another delinquent credit card with the lender listed in SOR subparagraph 1.j. It totals \$7,636. Applicant contacted the creditor about this debt in November 2014. Since then, he has been making payments consistent with the agreement. (Tr. 59-60)

The debt listed in SOR subparagraph 1.l, totalling \$426, is owed to a storage company. Applicant satisfied this debt in January 2013. (AE M) Subparagraphs 1.m through 1.o are miscellaneous debts totalling approximately \$770. Applicant satisfied them using his 2014 income tax refund. (Tr. 43)

---

<sup>1</sup>Applicant obtained an internship in another area, prompting his need to relocate.

Applicant earns \$115,000 annually. (Tr. 78) He has approximately \$700 of monthly discretionary income.

In 2006, Applicant and his then-girlfriend got into a heated argument after she caught him at home with another woman. (GE 2 at 6) An altercation ensued, as Applicant and his then-girlfriend exchanged shoves. The commotion spilled outside of the apartment, as a female friend of his then-girlfriend confronted the woman who was at the home when they arrived, in the parking lot. Subsequently, Applicant's then-girlfriend called the police. Upon arriving, the policeman asked everyone questions, then left without arresting anyone. (GE 2 at 6)

The next day, a friend informed Applicant that his then-girlfriend had pressed charges against him for assault and battery. Subsequently, Applicant went to the police department. He was fingerprinted, photographed, taken to a magistrate before returning home. Three days later, Applicant's then-girlfriend dropped the charges.

In June 2011, Applicant completed a security clearance application. He answered "No" in response to Section 20, which required him to disclose any arrests, charges, or convictions within the seven years preceding the completion of the security clearance application. (GE 2) Applicant testified that he did not list the 2006 arrest because he "didn't know [he] was supposed to say [he] was arrested when all [he] did was turn [him]self in." (Tr. 38)

During the security clearance process that began with Applicant's completion of a job application in September 2011, he disclosed to an investigator that he smoked marijuana three times per week from 2001 to 2005 while in college. (GE 3 at 12) In June 2013, Applicant began a security clearance process related to his application for another job. During an interview, he told the investigative agent that he had only used marijuana once in his life. (GE 3 at 7)

## **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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."

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 for obtaining a favorable security decision.

## **Analysis**

### **Guideline F, Financial Considerations**

Under this guideline, “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.” (AG ¶ 18) Applicant’s delinquencies trigger the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

Nearly all of Applicant’s debts became delinquent during a six-month unemployment period in 2011. Since then, he has either satisfied his debts in their entirety, or developed payment plans to satisfy them. Given Applicant’s ample discretionary income and his adherence to the payment plans, thus far, I am confident that his financial problems will not recur. I conclude that all of the mitigating conditions apply, as listed above. Applicant has mitigated the financial considerations security concern.

### **Personal Conduct**

The security concern under this guideline is, as follows:

[c]onduct 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 ¶ 15).

Applicant's omission of a 2006 arrest from his 2011 security clearance application, and his minimization of past marijuana use during an interview with an investigator, as part of a later investigation, raise the issue of whether the following disqualifying conditions apply:

AG ¶ 16(a), deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities, and

AG ¶ 16(b), deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant's statement to an investigator in 2013 that he only used marijuana once in his life blatantly contradicted what he told an agent during a 2011 interview. AG ¶ 16(b) applies to SOR subparagraph 2.c without mitigation.

As for subparagraph 2.a, the credibility of his explanation for omitting the 2006 arrest from his 2011 security clearance application is undercut by his 2013 falsification to an investigative agent regarding his previous marijuana usage. AG ¶ 16(a) applies to SOR subparagraph 2.a without mitigation. Applicant has failed to mitigate the personal conduct security concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

I considered the whole-person concept factors in my analysis of the disqualifying conditions, particularly the disqualifying condition governing personal conduct, and I conclude that they do not warrant a favorable conclusion.

### **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-1.o:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant

### **Conclusion**

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

MARC E. CURRY  
Administrative Judge