



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-01454
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

03/17/2015

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. The security concerns raised by Applicant’s less than \$5,000 in outstanding delinquent debt are mitigated. However, Applicant failed to mitigate the concerns surrounding his 35-year history of cocaine use. Clearance is denied.

**Statement of the Case**

On July 17, 2014, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the drug involvement and financial considerations guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance.

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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.

Applicant answered the SOR and requested a decision without a hearing. The Government submitted its written case on November 17, 2014. A complete copy of the file of relevant material (FORM) and the Directive was provided to Applicant. He received the FORM on December 8, 2014, and filed his response timely. The attachments to the FORM are admitted as Government's Exhibits (GE) 1-7 and documents comprising Applicant's response to the FORM are admitted as Applicant's Exhibits (AE) A-B, without objection from either party.<sup>2</sup> The case was assigned to me on January 6, 2015.

### **Procedural Rulings**

In the FORM, Department Counsel moved to withdraw SOR ¶ 2.c, regarding a delinquent consumer credit account for \$2,400. The motion is granted.

### **Findings of Fact**

Applicant, 49, has worked as a shipfitter for a federal contractor since October 2013. On his security clearance application, dated October 2013, he disclosed cocaine use, alcohol and drug counseling, and three delinquent consumer credit accounts.<sup>3</sup> The ensuing investigation revealed the following information:

Applicant first used cocaine in 1977. However, the record contains conflicting information on the duration and frequency of his drug use. On his security clearance application, Applicant disclosed that he used cocaine a few times a year at parties between 1977 and 2011. He also stated his intent not to use the drug in the future, citing unexplained emotional and physical hardships in his past. In his December 2013 interview with a background investigator, Applicant reported that when he first began using cocaine he would snort one gram one to two nights a week. In the 1990s, his use decreased to three times per year. He continued using at this rate until 2012. He also discussed participating in an outpatient drug and alcohol counseling program for one month in 2011. Applicant explains that he quit the program because the counselor repeatedly accused him of ongoing drug use because he appeared to be in good physical shape. Applicant adopted and verified the accuracy of his subject interview in his May 2014 response to DOHA interrogatories.<sup>4</sup>

In his August 2014 answer to the SOR, Applicant claims that he tried cocaine in 1977, but did not use the drug again for 12 years. He quantified his use as 12 times in 37 years. In his October 2014 FORM response, Applicant continued to repudiate his subject interview statements. He denied using the drug with the frequency he reported in his subject interview, stating that the statements recorded in the interview were misleading. Applicant claimed he stopped using the drug because his doctor advised

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<sup>2</sup> Department Counsel's memorandum regarding Applicant's FORM response is appended to the record as Appellate Exhibit (AP Ex.) I.

<sup>3</sup> GE 4.

<sup>4</sup> GE 4-5.

that drug use was bad for his health. In 2012, Applicant was denied employment by his current employer for testing positive for cocaine on a pre-employment drug screening. He was required to wait a year before reapplying. Applicant states that he does not have any intent to use cocaine in the future.<sup>5</sup>

In addition to the past drug use, the investigation confirmed and the SOR alleges that Applicant is indebted to two creditors for approximately \$5,600. Applicant admits that he owes the debts, which were incurred during a period of unemployment and underemployment between 2008 and 2013. Since returning to full employment, Applicant claims that he has paid at least \$900 toward SOR ¶ 2.a (\$2,500) and \$1,500 toward SOR ¶ 2.b (\$3,100). Applicant provided documentation corroborating three payments toward SOR ¶ 2.b and the account balance is now \$1,400. He did not provide any documentation to corroborate payments made toward the resolution of SOR ¶ 2.a or the \$2,900 he claims to have paid in non-SOR debts.<sup>6</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 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 this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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).

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<sup>5</sup> GE 3, 5; AE A.

<sup>6</sup> GE 3-4, 6-7; AE A-B.

## Analysis

### 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>7</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>8</sup> There is also concern that an individual who is overextended is at risk of having to engage in illegal acts to raise funds.

The SOR alleges that Applicant owes approximately \$5,600 in delinquent debt. The allegations are supported by the record, establishing the Government’s *prima facie* case.<sup>9</sup> Applicant has demonstrated an inability to pay his debts as well as a history of not doing so.<sup>10</sup> However, the record contains sufficient evidence to mitigate the security concerns regarding his finances. Security clearance adjudications are not debt collection proceedings and an applicant is not required to prove that he is debt free. Applicant has submitted documentation showing that he is making a good-faith effort to repay his delinquent debt. Applicant is participating in a payment plan for one of the two accounts alleged in the SOR.<sup>11</sup> The amount of Applicant’s total outstanding delinquent debt is under \$5,000 and is an unlikely source of vulnerability, coercion, or exploitation.

### Drug Involvement

Applicant’s conduct is disqualifying under the drug involvement guideline. Use of an illegal drug raises concerns about a person’s ability or willingness to comply with laws, rules, and regulations.<sup>12</sup> Applicant admitted to having a history of illegal drug use from 1977 to 2012 and to testing positive for cocaine on a pre-employment drug test in 2012.<sup>13</sup>

Given the conflicting information Applicant’s has provided about his drug use during this adjudication, the record does not support a finding that his drug use was infrequent, that it happened under any unusual circumstances, or that it is unlikely to recur. He has not completed any drug counseling program or provided evidence

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<sup>7</sup> AG ¶ 18.

<sup>8</sup> See ISCR Case No. 11-05365 (App. Bd. May 1, 2012).

<sup>9</sup> GE 3, 6-7.

<sup>10</sup> AG ¶¶ 19(a) and (c).

<sup>11</sup> AG ¶ 20(d).

<sup>12</sup> AG ¶ 24.

<sup>13</sup> AG ¶¶ 25(a) and (b).

suggesting a change of lifestyle that would make future use unlikely. While Applicant no doubt felt the consequences of failing his 2012 pre-employment drug test, there is nothing in the record to suggest that the event caused a lasting change in behavior. Applicant's two plus years of abstinence are not sufficient to mitigate a 35-year history of illegal drug use. None of the drug involvement mitigating conditions apply.

In evaluating the merits of this case, I have considered the potentially disqualifying and mitigating conditions as well as the whole-person concept. Doubts remain about Applicant's ability to properly handle and safeguard classified information.<sup>14</sup> Although the financial considerations concerns are mitigated, concerns regarding Applicant's long history of drug use remain. Following *Egan*<sup>15</sup> and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

### 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, Drug Involvement:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Paragraph 2, Financial Considerations:	FOR APPLICANT
Subparagraph 2.a – 2.b:	For Applicant
Subparagraph 2.c:	Withdrawn

### Conclusion

Based on the record, 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.

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Nichole L. Noel  
Administrative Judge

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<sup>14</sup> AG ¶ 2(a).

<sup>15</sup> *Navy v. Egan*, 484 U.S. 518 (1988).