



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



In the matter of:)	
)	
)	ISCR Case No. 14-02059
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

01/29/2015

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes approximately \$105,000 in delinquent debt, including almost \$75,000 in child support. He is on probation after serving three years in prison for attempting to commit illegal sexual contact with a victim under age 16, enticing a minor by computer, and violating a condition of release in July 2008. Clearance is denied.

Statement of the Case

On July 21, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and Guideline J, Criminal Conduct, and explaining why it was unable to find it clearly consistent with the national interest to grant a security clearance for him. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on August 13, 2014. He requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On September 25, 2014, I issued a Notice of Hearing scheduling the hearing for October 15, 2014.

I convened the hearing as scheduled. Seven Government exhibits (GEs 1-7) and two Applicant exhibits (AEs A-B) were admitted into evidence without objection. Department Counsel submitted as a supplement to his oral closing argument a chart, which was marked as a hearing exhibit but not entered into evidence. Applicant testified, as reflected in a transcript (Tr.) received on October 24, 2014.

Summary of SOR Allegations

The SOR alleges under Guideline F that as of July 21, 2014, Applicant owed consumer collection debt totaling \$18,435 (SOR 1.a, 1.b, 1.i, 1.k, and 1.l); delinquent utility debt of \$1,002 (SOR 1.c and 1.d); a \$9,354 charged-off balance to the DOD (SOR 1.g); and child support arrearages of \$24,926 (SOR 1.h), \$16,859 (SOR 1.e), \$23,687 (SOR 1.f), and \$11,014 (SOR 1.j). Under Guideline J, Applicant allegedly paid \$500 restitution on May 2013 charges of disorderly conduct, 3rd degree criminal mischief, and emergency call interference (SOR 2.a). In addition, he was sentenced to 10 years in prison (execution suspended after three years), to 10 years of probation, and required to register as a sex offender, for attempting to commit illegal sexual contact, enticing a minor by computer, causing a risk of injury, 2nd degree sexual assault, and violation of a condition of release in July 2008 (SOR 2.b). He was sentenced to one year in jail for 3rd degree assault in May 2008 (SOR 2.c). He was convicted and sentenced to one year of probation with loss of license for one year for operating a vehicle under the influence of alcohol in June 2006 (SOR 2.d). He received non-judicial punishment in the military for disobeying a direct order in July 2004 (SOR 2.e). Applicant admitted all the allegations without explanation.

Findings of Fact

Applicant's admissions to the SOR allegations are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the additional findings of fact:

Applicant is a 34-year-old electronics technician, who has worked as a test technician for a defense contractor since March 2013. He served on active duty in the United States military from February 2001 to March 2008, when he was granted a discharge of honorable under general conditions. (GE 1; Tr. 29-30.) In June 2006, Applicant was granted access to sensitive compartmented information for his military duties as a custodian for classified information. (GE 1.) He has not held a security clearance as a defense contractor employee.

Applicant has never been married. He has six children ranging in age from 6 to 10 with five different women. He is required to pay child support for five of his children. (GE 1; Tr. 49-51.) He does not pay child support for his nine-year-old daughter at the choice of her grandparents. (Tr. 50.)

Applicant fell behind on his child support and on some consumer credit obligations, in part because of his incarceration for serious criminal conduct. The salient details of his criminal record and financial difficulties are as follows.

In June 2004, Applicant was arrested for operating under the influence of alcohol, which violated his commander's order not to drink and drive. He received non-judicial punishment for disobeying a direct order and was suspended in rank for six months with forfeiture of half his pay for two months. (GE 1; Tr. 30-31.)

In June 2006, Applicant was driving while intoxicated when he was rear-ended by another vehicle. Applicant was transported to the hospital and arrested for driving under the influence (DUI). Sometime in 2007, he was convicted and sentenced to one year of probation and to attend alcohol classes. In addition, his vehicle operating privileges were suspended for one year. (GE 1; Tr. 32-33.)

Following his discharge from the U.S. military in March 2008, Applicant began working as an applications engineer for an automated billing systems company. In late May 2008, Applicant and the mother of his eldest and youngest children had an argument. She was pregnant with Applicant's youngest child at the time. She complained to the police that Applicant had choked her, which he denied. Applicant was arrested for unlawful restraint, risk of injury, reckless endangerment, 3rd degree assault, disorderly conduct, and 2nd degree strangulation. Applicant was jailed for one week until he posted bail. He was placed in a 10-week family violence program. (GEs 1, 5, 7; Tr. 33-34.)

While the May 2008 charges were pending, Applicant corresponded almost daily for about six weeks in an adult chat room with an undercover police officer posing as a 15-year-old. The undercover officer arranged to meet Applicant at an apartment for a sexual encounter on July 22, 2008. Applicant went to the meeting with the intent of engaging in sexual contact. (Tr. 39.) When Applicant arrived, he was arrested. He was charged with attempt to commit illegal sexual contact with a victim under age 16, enticing a minor by computer, and 1st degree violation of a condition of release, all felonies, and with DUI. Applicant pleaded not guilty to the DUI on July 23, 2008, and the charge was not prosecuted. In July 2009, Applicant pleaded guilty to the other charges. For attempting to commit illegal sexual contact with a victim under age 16, he was sentenced to 10 years in prison, execution suspended after three years served, and to 10 years of probation. He received concurrent three-year prison terms on the other felony charges. (GEs 1, 5-7; Tr. 35-41.)

Applicant was incarcerated from July 2008 through July 2011. While he was in prison, he pleaded guilty to 3rd degree assault on the May 2008 charges to avoid further court proceedings. (Tr. 35.) On Applicant's release from incarceration, he registered as a

sexual offender and began serving 10 years of probation. (GE 5; Tr. 41.) He finished sex offender counseling in 2012. (Tr. 43.) As of October 2014, Applicant was still on probation and meeting with his probation officer once a month. Under the terms of his probation, he is prohibited from accessing social media via a computer and from drinking alcohol. He is required to submit to a polygraph examination annually to confirm his compliance with the terms of his probation. (Tr. 43-44.) Applicant has abstained from alcohol as required, and he has not had any improper communications with minors. (Tr. 42-44.)

Applicant began working as a machinist in October 2011, but he was terminated in December 2011 for unsatisfactory performance (i.e., unable to properly operate a machine, which caused it to crash with some damage). (GE 1.) Applicant worked for a swimming pool care business from February 2012 to September 2012 and was otherwise unemployed until March 2013, when he began his present job. (GEs 1, 7; Tr. 45-46.) Applicant paid child support while working as a mechanic but not while working for the pool care company. (Tr. 53-54.) He began attending a local technical institute in December 2012. (GE 1.) Applicant took out a \$3,500 student loan, which is currently deferred. (GE 4.)

In May 2013, Applicant was arrested for disorderly conduct, 3rd degree criminal mischief, and emergency call interference. A former roommate complained to the police that Applicant had broken her telephone and television during an argument, while he asserted that she did the damage. The charges against Applicant were dropped after he paid \$500 in restitution for the television. (GEs 1, 5, 7; Tr. 47-48.)

On December 5, 2013, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP). Applicant disclosed his police record, including his three-year incarceration. Applicant responded affirmatively to some of the financial record inquiries covering delinquencies in the past seven years. He indicated that he was \$55,000 behind in his child support because of unemployment during his incarceration (SOR 1.e, 1.f, and 1.j), but he added that \$346 was being withheld from his pay per week for child support. Applicant disclosed five past-due routine accounts: a \$15,362 motor vehicle loan (SOR 1.k); two credit card debts of \$796 (SOR 1.a) and \$788 (not alleged); a \$9,354 reenlistment bonus overpayment (SOR 1.j), and \$1,218 in cable costs (SOR 1.i). (GE 1.)

As of January 11, 2014, Applicant had several collection debts on his record. He owed \$875 on the VISA account identified in SOR 1.a, \$155 on a cable debt placed for collection in April 2009 (SOR 1.b), \$1,217 for other cable services (SOR 1.i), and \$826 in credit card debt in collection since February 2008 (SOR 1.l). An auto lender was reporting a \$15,362 collection balance for a repossessed vehicle (SOR 1.k). A \$9,354 balance had been charged off to profit and loss by the Defense Finance and Accounting Service (DFAS) around October 2008 (SOR 1.g). A utility provider placed two debts, of \$662 (SOR 1.c) and \$340 (SOR 1.d), for collection in November 2013. Applicant also owed past-due child support of \$16,675 (SOR 1.e, opened July 2005), \$23,687 (SOR 1.f, opened March 2009), \$11,014 (SOR 1.j, opened October 2005), and \$24,926 (SOR 1.h, opened January 2006).¹ He was making monthly child support payments through payroll deduction on the

¹ One of the child support accounts covers two of the five children (likely the brothers) for whom he is paying

accounts identified in SOR 1.e, 1.f, and 1.j, but the child support account in SOR 1.h (likely for his nine-year-old son) was reportedly in collection.² (GE 4.)

As of September 2014, the credit card debt in SOR 1.a had accrued to \$908. The child support debt in State Y (SOR 1.h) was \$24,481. (GE 4.) Applicant was not making any payments on the credit card debt, on the past-due utility and cable debts (SOR 1.b, 1.c, 1.d, and 1.i), or on the charged-off DFAS (SOR 1.g) or car loan (SOR 1.k) debts. (Tr. 52, 55.) Applicant was told by DFAS that he could not pay the debt because it has been charged off. (Tr. 55.) Applicant's loan debt for the repossessed car (SOR 1.k) is still on his credit record, even though the lender no longer has a record of his account. (GE 4; Tr. 56.) Applicant was making regular payments toward his child support obligations in state X. Balances on those accounts were reported as \$15,634 (SOR 1.e), \$24,478 (SOR 1.f), and \$9,990 (SOR 1.j). Applicant had not opened any new consumer credit accounts. (GE 4.)

Applicant received a pay raise at work in the spring of 2014 because of his work performance and time on the job. (Tr. 47, 65-66.) As of October 2014, \$353 of Applicant's weekly pay was going toward child support. (AE A.) Applicant's take-home pay after deductions and child support payments averages between \$230 and \$270 per week depending on overtime earnings. Applicant has little to no funds left after he pays his monthly expenses, which include rent at \$520 and cell phone service at \$50. (Tr. 62.) In early September 2014, he took on a second job as a mechanic to supplement his income. He works 20 hours a week at \$15 an hour. (Tr. 27-28.) The extra income from this part-time job goes toward his current bills. (Tr. 63.)

In summer 2014 and again in early October 2014, Applicant looked into debt resolution. He intends to hire a debt resolution firm to dispute the debts on his credit record. He has been quoted a cost of \$50 a week for the service. (Tr. 27-28, 57-58.)

Applicant is current on his federal and state income tax obligations. In recent years, including tax year 2013, his tax refunds have been intercepted and applied to his child support delinquencies. (Tr. 64.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

child support. (Tr. 51.)

² Applicant's older daughter and three of his sons live in state X where Applicant owed child support totaling \$51,560 (SOR 1.e, 1.f, and 1.j). Applicant's other two children reside in State Y, where Applicant owed delinquent child support of \$24,926 (SOR 1.h). Since Applicant is not required to pay child support for that daughter, the support is apparently for the care of his son born in January 2006. (GEs 1, 4.)

disqualifying conditions and mitigating conditions, which are required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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 contained in the record. 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

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.

When Applicant left the U.S. military, he owed DFAS about \$9,354 for a reenlistment bonus. He did not pay the debt because of his ongoing child support obligations, which were first incurred in July 2005. Applicant could not pay his child support or his consumer credit obligations when he was incarcerated between July 2008 and July 2011. He defaulted on an automobile loan opened in September 2006, and the car was repossessed. The lender charged off his account with a \$15,362 balance. Child support was deducted from his pay for three months in late 2012 and his income tax refunds were intercepted and applied to his child support debts. Even so, the evidence establishes that he owed approximately \$105,277 in delinquent debt as of the issuance of the SOR. Three disqualifying conditions under AG ¶ 19 apply:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.

Mitigating condition, AG ¶ 20(a), “the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual’s current, reliability, or good judgment,” does not apply. The utility debts in the SOR were placed for collection relatively recently, in November 2013. Furthermore, Applicant has not made any payments on the delinquent debts other than his child support arrearage.

Applicant fell behind because of unemployment, but lack of income because of incarceration following a felony conviction is not a circumstance that implicates AG ¶ 20(b), which provides as follows:

- (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.

Applicant’s ongoing child support payments partially establish AG ¶ 20(c) and AG ¶ 20(d), to a greater or lesser extent depending on whether Applicant initiated the wage deductions or the states attached his wages:

- (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 indicated on his e-QIP that his wages were being withheld to pay his child support arrearage in state X. His paystub for the week ending October 5, 2014 (AE B) shows four separate deductions for child support totaling \$353. It does not indicate that the deductions are other than voluntary. Applicant's credit reports show significant reductions, from \$16,859 to \$15,634 in the child support arrearage identified in SOR 1.e. and from \$11,014 to \$9,900 in the child support arrearage identified in SOR 1.j. Even so, it would be premature to mitigate fully the financial concerns under either AG ¶ 20(c) or AG ¶ 20(d). Applicant has not made any payments on his other delinquent debts. While he had looked into hiring a debt resolution firm to clean up his credit report, he had no arrangements in place as of his security clearance hearing.

Mitigating condition AG ¶ 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue," is implicated only in that Applicant is apparently not being pursued by DFAS for the \$9,354 re-enlistment bonus monies or by the auto lender for the \$15,362 deficiency balance of his loan for the repossessed vehicle. Applicant does not dispute that he incurred either of those delinquent debts, however, and they remain on his credit record as outstanding balances. Applicant took on a part-time job for the extra income to address his debts, but even so, he has little prospect of resolving his delinquent debts in the near future. The financial considerations concerns are not fully mitigated.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Applicant received non-judicial punishment in July 2004 after he was caught driving drunk. Two years later, he was convicted of a June 2006 DUI. Two months after his discharge from the U.S. military, Applicant was involved in a domestic altercation in May 2008. He eventually pleaded guilty to assault in the 3rd degree. Raising greater security concern, Applicant was convicted of the felony offenses of attempting to commit illegal sexual contact, enticing a minor by computer, and violating a condition of release in July 2008. After serving three years in prison for those offenses, he was placed on supervised probation for ten years. On probation until July 2021, Applicant was involved in a domestic dispute with a former roommate in May 2013. He denies validity to the charges, which were dismissed, but he also paid \$500 in restitution. Three disqualifying conditions under AG ¶ 31 are established:

(a) single serious crime or multiple lesser offenses;

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and

(d) individual is currently on parole or probation.

The evidence falls short of establishing AG ¶ 31(e), “violation of parole or probation, or failure to complete a court-mandated rehabilitation program,” despite Applicant’s May 2013 arrest and domestic altercation. Applicant testified that as conditions of his probation, he is required to abstain from alcohol and to refrain from accessing social media via a computer. Individuals on probation are generally required to remain law-abiding. However, without any evidence that an arrest alone would qualify as a violation, I cannot conclude that AG ¶ 31(e) applies.

Applicant has not committed any alcohol-related criminal offenses or any felonious conduct since July 2008. There is no evidence that Applicant was under the influence of alcohol when he argued with his former roommate in May 2013. He denies that he committed the criminal mischief in that he did not damage any of his former roommate’s personal property. Instead, he asserts that she “trashed the apartment, broke the TV, [and] threw the phone.” (Tr. 47.) Applicant does not deny that he had to pay \$500 in restitution, which suggests some culpability on his part. Even so, AG ¶ 32(a) is implicated in part:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.

Applicant shows some evidence of successful rehabilitation under AG ¶ 32(d) in that he completed sexual offender counseling, and he has been a productive employee for a defense contractor since March 2013. He began attending a technical institute in December 2012 for training to advance his employment opportunities. He has abstained from alcohol, as required of his probation, and he has not been arrested since May 2013. AG ¶ 32(d) provides as follows:

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

However, Applicant is scheduled to remain on probation until 2021. Probationary status does not necessarily preclude a person from being granted security clearance eligibility, but I also cannot ignore that the state does not consider Applicant to be fully rehabilitated. Applicant admitted that he went to the meeting arranged by the undercover officer, who was posing as a 15-year-old female, with the intention of having sexual contact. Given the seriousness of Applicant’s July 2008 crimes, it would be premature to grant him a security clearance at this time.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).³

Applicant has taken credible steps in reform, including being fully candid on his e-QIP about his financial problems and his criminal past. Nonetheless, it is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990.). Concerns about Applicant's financial situation and his criminal conduct persist for the reasons noted above. Applicant may be a good candidate for a security clearance in the future should he be able to reduce his debt burden and convincingly show that the criminal conduct is not likely to reoccur. After considering the adjudicative guidelines in light of the evidentiary record, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

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:	Against Applicant
Subparagraph 1.c:	Against 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

³ The factors under AG ¶ 2(a) 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.

Paragraph 2, Guideline J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant
Subparagraph 2.b: Against Applicant
Subparagraph 2.c: Against Applicant
Subparagraph 2.d: For Applicant
Subparagraph 2.e: 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge