



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-12438  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Stephanie C. Hess, Esquire, Department Counsel  
For Applicant: *Pro Se*

May 8, 2009

**Decision**

WESLEY, Roger C., Administrative Judge:

**History of Case**

On March 6, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on August 27, 2008, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on February 2, 2009, and did not respond with any information. The case was assigned to me on April 8, 2009. Based upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is denied.

**Summary of Pleadings**

Under Guideline F, Applicant is alleged to have accumulated several delinquent debts between 2006 and 2008. They comprise a utility debt of \$612.00 and several student loans exceeding \$25,000.00 in the aggregate.

Under Guideline E, Applicant is alleged to (a) have sold alcohol to a minor working in a convenience store in November 1998, for which he was fined \$350.00, and (b) used the drug ecstasy on about three or four occasions during the period of 2003-2004.

For his response to the SOR, Applicant admitted each of the allegations. He claimed he was not aware of the utility debt before it was brought to his attention during the course of his security clearance investigation. He claimed that his short term jobs did not produce enough revenue to enable him to pay off his student loans, as he had hoped. He claimed that his alcohol-related conviction was an isolated incident nearly 10 years ago that has not been repeated. And he claimed that his use of ecstasy was very limited (three to four times during the September 2003 and September 2004 time period, and has not been repeated. He claimed he has not pursued illegal drugs since September 2004.

### **Findings of Fact**

Applicant is a 32-year-old technical writer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Records document that Applicant is unmarried and has no children (see ex. 4). He has no military service of record (ex. 4). He attended college between 1994 and 1998 and was awarded a bachelors degree in mass communications in August 1998 (see ex. 4).

Applicant accumulated a delinquent utility debt with creditor 1.a and several delinquent student loan debts with creditor 1.b between 2006 and 2008. His credit report indicates he took out his student loans in 1995 and 1997, respectively, and defaulted on them in June 2006 (see ex. 6). He attributes (a) his utility debt (creditor 1.a) to his mistaken belief that the debt was already discharged and (b) his student loan deficiencies to his lack of good paying jobs (see exs. 3 and 5).

Applicant indicated in the interrogatory responses he furnished in October 2007 that he had not contacted his creditors to resolve his debts. And he conditioned any good faith repayment efforts to repay his student loans on his obtaining a security clearance (see exs. 3 and 5).

To date, Applicant has provided no documentation of any efforts to pay or otherwise resolve his listed debts. In the personal financial statement he furnished, he lists net income of \$1,778.00, total expenses of \$1,430.00, and a net remainder of \$348.00 (ex. 5).

In 1998, Applicant (age 22 at the time) was charged and convicted of selling alcohol to a minor while working in a convenience store. In this instance, he failed to check the ID of the minor seeking to purchase alcohol (ex. 3). He was fined \$350.00 by the court.

In 2003-2004, Applicant used ecstasy on about three to four occasions. He assures he has not pursued any further drug use, and has no intention to do so. He states that he has since followed all laws and regulations related to drug use (ex. 3). Applicant's evidence is not controverted by any other evidence in the record, and is accepted.

Applicant provided no endorsements or performance evaluations in his behalf. Nor did he provide any proofs of community and civic contributions.

### **Policies**

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Financial Considerations**

*The Concern:* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG, ¶ 18.

### **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, 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. See AG, ¶ 15.

## **Burden of Proof**

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

## **Analysis**

Applicant is an employee of a defense contractor who accumulated a number of delinquent debts (mostly student loans) during periods of underemployment. All of his listed debts remain unresolved at this time. Besides his delinquent debts, Applicant was involved a prior alcohol-related offense in 1998, and used illegal drugs on several occasions in the 2003-2004 time frame.

### **Applicant's finances**

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts and his past inability and unwillingness to address these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines DC ¶ 19(a), inability or unwillingness to satisfy debts, and ¶19(c) "a history of not meeting financial obligations."

Applicant's debts are attributable in part to his holding low paying jobs following his college graduation in August 1998. All but one of his listed delinquent debts involve delinquent student loans. To date, he has not manifested any efforts to address these debts, and conditions any future payments on the debts to his obtaining a security clearance.

Without any documented payment history or plan to resolve his listed debts, Applicant cannot be credited with any manifest progress to date in regaining control of his finances and provides no hard assurances of any commitment to resolve his debts in the foreseeable future. Applicant's finances still require a good deal of effort on his part to fully stabilize them.

Based on his evidentiary showing, extenuating circumstances are associated with Applicant's inability to take care of his past debts. Available to Applicant is MC ¶ 20(b) of the financial considerations guideline, "the conditions that resulted in the behavior 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)." Also, some judgment problems persist over the delinquencies he has failed to cure with respect to his student loans, and the conditions he places on addressing them.

Mitigation credit is not available to Applicant based on the evidence developed in this administrative record. Not only are his listed debt delinquencies ongoing, but he has failed to address them in any tangible way.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Whole person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts (especially those associated with his student loans). Since graduating from college in 1998, he has not shown any manifest effort in addressing any of his covered debts to mitigate his still delinquent debts, and credit him with restored control over his finances. In balance, whole person assessment does not enable Applicant to establish judgment and trust levels sufficient to enable him to overcome appraised security concerns arising out his accumulation of delinquent debts.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the limited resources he has had to address them with, the absence of any corrective actions to address his old debts, it is still soon to make safe predictive judgments about Applicant's ability to repay his debts and restore his finances to stable levels commensurate with his holding a security clearance. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a and 1.b.

## **Applicant's alcohol and drug abuse history**

Applicant's alcohol and drug involvement is very limited. Still, it is sufficient (considered together) to raise some independent security concerns.

On the strength of the evidence presented, one of the disqualifying conditions of the AGs for personal conduct is applicable: DC ¶ 16(d)(3), "a pattern of dishonesty or rule violations. Afforded an opportunity to respond to the FORM materials, Applicant did not reply.

Judgment concerns exist over Applicant's past alcohol-related conviction and ensuing use of illegal drugs. These actions reflect judgment lapses and disregard of local laws and regulations governing substance abuse. Applicant's actions are expressly covered by Guideline E, and are entitled to independent cognizance under this Guideline according to the Appeal Board. See ISCR Case No. 06-20964, at 6 (April 10, 2008). Where (as here) there is additional probative adverse information covered by Guideline E that is not expressly covered by Guidelines G and H, and which reflects a recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior, independent grounds do exist for considering questionable judgment and trustworthiness allegations under Guideline E. Authority for considering overlapping conduct covered by multiple guidelines is contained in the guidance provided in Enclosure 2, ¶ 2(d) of the Directive's August 2006 amendments.

So, under Guideline E, core judgment and trustworthiness concerns covered by D.C. ¶ 16(d), "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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," is applicable in this case.

Applicant may take advantage of one of the mitigating conditions under the personal conduct guideline. MC ¶ 17(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," is fully applicable. Here again, Applicant's involvement with alcohol-related offenses and illegal drugs is limited to the one alcohol-related offense in 1998 and the few scattered incidents of illegal drug use in 2003-2004. None of the covered conduct has been since repeated, and is unlikely to be repeated in the future based on the evidence of record.

From a whole person perspective, Applicant has not established enough independent probative evidence in the administrative record to warrant positive assessments under the whole person concept in the Directive. He has provided no endorsements from supervisors and coworkers with his employer to soften or mitigate any of the drug and judgment concerns associated with his past drug use.

Still, our Appeal Board has cautioned against drawing adverse inferences and conclusions based on past actions and the absence of any corroborating proof of suspension of alcohol-related offenses and drug use. See ISCR Case No. 01-26893 (October 2002); ISCR Case No. 97-0356 (April 1998). The Appeal Board has consistently held that an unfavorable credibility determination concerning an applicant is not a substitute for record evidence that the applicant used marijuana since his last recorded use, or based on his past use is likely to resume usage in the future. See ISCR Case No. 02-08032 (May 2004).

Taking into account all of the facts and circumstances surrounding Applicant's judgment lapses stemming from his one alcohol-related offense in 1998 and limited drug use in the limited time period of 2003-2004, Applicant mitigates security concerns related to his personal conduct issues. Favorable conclusions warrant with respect to the allegations covered by Guideline E.

In reaching my decision, I have considered the evidence as a whole, including each of the E2(a) factors enumerated in the Adjudicative Guidelines of the Directive.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCES):	AGAINST APPLICANT
Sub-paras. 1.a and 1.b:	Against t Applicant
GUIDELINE E: (PERSONAL CONDUCT):	FOR APPLICANT
Sub-paras.2.a and 2.b:	For Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge

