



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-14764  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro Se*

October 30, 2009

**Decision**

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HOWE, Philip S., Administrative Judge:

On March 21, 2007, Applicant submitted his Security Clearance Application (SF 86). On April 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations), Guideline H (Alcohol Consumption), and Guideline G (Drug Involvement). 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on April 27, 2009. Applicant answered the SOR in writing on May 14, 2009, and did not request a hearing before an administrative judge. Department Counsel requested a hearing on June 12, 2009, and was prepared to proceed on June 16, 2009. I received the case assignment on June 17, 2009. DOHA issued a Notice of Hearing on June 26, 2009, and I convened the hearing

as scheduled on July 13, 2009. The government offered Exhibits 1 through 12, which were received without objection. Applicant testified and submitted Exhibit A., without objection. DOHA received the transcript of the hearing (Tr.) on July 21, 2009. I granted Applicant's request to keep the record open until July 31, 2009, to submit additional matters. On July 28, 2009, he submitted Exhibits B through D, without objection. The record closed on July 31, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.d, 2.a, 2.c, and 3.a of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.c, 2.b, 3.b, and 3.c of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 34 years old, married, and has one child born during this marriage. His wife is unemployed. Applicant works for a defense contractor. He has another child from a prior relationship, for whom he pays \$47 per week in child support. Applicant has a high school degree. He does not have a current security clearance. His salary is in the \$25,000 to \$30,000 range. (Tr. 6, 28-36, 68; Exhibits 1, D)

Applicant owes \$453 for medical treatment he received in 2001 for a seizure he suffered. He assumed his employer's insurance paid that debt. He did not learn about this debt until 2007, when he applied for his security clearance. He also owes \$2,428 on another medical debt. He contacted both creditors about arranging installment payment plans, but has not been successful in those efforts to date. Applicant believed that the creditor for the \$2,428 debt was to resubmit it for insurance payment. Applicant did not verify that the debt was resubmitted to the insurance company. Applicant also owes \$100 for a third medical debt from 2003. Applicant is paying this debt. These three debts are being paid at the rate of \$20 per month each by Applicant. He started paying them in July 2009. (Tr. 54-59; Exhibits 2-6, C)

Applicant's credit reports also show \$78,000 owed by him on a house he bought with a former fiancé in 2002. He executed a warranty deed to his former fiancé on July 9, 2004. It was recorded on November 5, 2004. The deed was prepared by an attorney. Applicant was attempting to rid himself of any obligations on the 2003 mortgage and the house. The bank that holds the mortgage told him he continues to be obligated on that mortgage. The house and mortgage were foreclosed because his former fiancé did not continue to make the payments on the mortgage. Applicant believes the house sold for about \$30,000, which would make him liable for half of the remainder, \$24,000. The bank has not contacted Applicant in several years. Applicant made numerous attempts recently to contact his former fiancé to arrange his removal from the mortgage. He was unsuccessful in these efforts. This debt is unresolved. (Tr. 61-66; Exhibits 2-6, B)

Applicant started drinking alcohol when he was 21 years old. Presently he drinks beer and usually consumes a six-pack a week. He was charged with driving while

intoxicated (DUI) in July 2004, when he sped and crossed the traffic lanes. His blood alcohol content was .19%, exceeding his state's legal limit. Applicant was also arrested at the same time for battery of a police officer, and possession of marijuana and cocaine. He pled guilty and was sentenced on two misdemeanors, an operating while intoxicated (OWI) and maintaining a common nuisance. The cocaine charge was dismissed or otherwise resolved by the state court without any finding against Applicant. His sentence was 365 days of jail time with 305 days suspended while he completed 30 days of home arrest and 30 days in jail. He also received probation. Applicant's driving privileges were suspended for 30 days after which he received a probationary license for 180 days. In addition, he was fined \$225, and was required to pay court costs of \$336, and a \$50 bond fee. He attended an alcohol evaluation program once a week for 13 weeks from February to March 2006. The diagnosis by a licensed clinical social worker was he abused alcohol. Applicant successfully completed the treatment program and received a graduation certificate. Applicant does not presently attend any alcohol program. (Tr. 44-53; Exhibits 6-12)

Applicant used marijuana from 1994 to April 1998, when he was arrested. The arrest was for marijuana possession and reckless possession of drug paraphernalia. He was found guilty, and sentenced to community service, and substance abuse counseling. He served two days in jail and had his driver's license suspended. He was also placed on probation for an actual total of two and a half years because Applicant was out of town frequently for work. Applicant used marijuana until 2004, and then stopped using it. Now he remains at home with his wife and child. Applicant does not associate with anyone who uses drugs because he spends most of his free time at home. (Tr. 37-43; Exhibits 6-12)

Applicant's wife owns the home in which they live. The mortgage is \$350 per month. Applicant's 1994 Oldsmobile and the 1999 Dodge are paid for. Applicant does not have any credit cards. (Tr. 68-76)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 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 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 the applicant may deliberately or inadvertently fail to protect or 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 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 relating to the guideline 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.

AG ¶ 19 describes nine conditions that could raise a security concern and may be disqualifying. Of these nine conditions, two conditions are applicable to this case:

- (a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant has four debts which are unresolved. Three of the debts are medical debts, for \$453, \$2,428, and \$100. The fourth debt is owed on a mortgage for a house in which Applicant lived in from 2002 until 2004, with his fiancé at the time. This debt is \$78,114.

AG ¶ 20 provides six conditions that could mitigate the financial considerations security concerns. From these six mitigating conditions, two conditions apply:

(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; and

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

The four debts listed in the SOR occurred during 2001 to 2003. Since then, Applicant has not incurred any other substantial delinquent debt. He lives simply with his wife and child. He has no credit cards, and he has no debt on his cars. AG ¶ 20 (a) applies to these debts.

Applicant is paying on three of the four debts, and has tried to resolve the mortgage debt. He is having difficulty doing so because he wants his former fiancé to cooperate with him and pay her share of the debt. He is paying \$20 each on the smaller non-mortgage debts each month. Applicant is executing a good-faith effort to resolve his debts. AG ¶ 20 (d) applies.

### **Guideline G, Alcohol Consumption**

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 describes six conditions that could raise a security concern and may be disqualifying. Two conditions apply:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant was arrested in 2004 for DUI while he was away from work. He attended a court-ordered alcohol rehabilitation program in 2006, during which he was diagnosed with alcohol abuse. The diagnosis was made by a licensed clinical social worker who worked at the program. AG ¶ 22 (a) and (e) apply.

AG ¶ 23 provides four conditions that could mitigate security concerns. Three of those conditions apply to this case:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant's last alcohol-related incident was five years ago. There have been no additional alcohol-related incidents after this one-time arrest and conviction. Such behavior was infrequent and it does not cast doubt on Applicant's trustworthiness, current reliability, or good judgment. AG ¶ 23 (a) applies.

Applicant continues drink beer, and uses it only at home in a responsible manner. He remains in his home with his family after he completes his workday. There have been no further incidents since 2004, indicating Applicant's recognition of his problem and the changes in his behavior pattern. AG ¶ 23 (b) applies.

Applicant regularly attended the court-order rehabilitation program in 2006. He successfully completed it. He demonstrated a changed pattern of consumption to responsible use at home. He completed the course requirements and received his graduation certificate from the program. AG ¶ 23 (d) applies.

## Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to illegal drugs:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes eight conditions that could raise a security concern and may be disqualifying. Of these disqualifying conditions, three apply to this case:

(a) any drug abuse (see above definition);

(b) testing positive for illegal drug use; and

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used marijuana from 1994 to 2004. He was arrested in 1998 and 2004, on charges which included possession of marijuana and paraphernalia. After his first arrest he continued to use marijuana. AG ¶ 25 (a), (b), and (c) apply.

AG ¶ 26 provides four conditions that could mitigate security concerns. Of these disqualifying conditions, two mitigating conditions apply:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

- (2) changing or avoiding the environment where drugs were used;
- (3) an appropriate period of abstinence; and,
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant's use of marijuana ceased in 2004. His last use was five years ago. He voluntarily stopped using marijuana as he matured. AG ¶ 26 (a) applies because of the passage of time and Applicant's circumstances have changed with his marriage and employment with the defense contractor. The past marijuana uses do not cast doubt on his current judgment and trustworthiness.

Applicant does not now associate with anyone who uses illegal drugs. Applicant remains at home with his family when not working. He is not in a drug-using environment. He has familial responsibilities, which consume his time, and cannot spend the money or time on purchasing marijuana. Applicant changed his attitude toward marijuana after he became a parent. He has five years of abstinence from marijuana.

### **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.

AG ¶ 2 (c) requires each case must be judged on its own merits. 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 the facts and circumstances surrounding this case. Applicant is resolving his debts with all the money he can spare at the present. These debts arose from medical costs he thought were covered by medical insurance provided by his employer. The fourth debt



is on a house mortgage, and he needs the cooperation of the other owner to resolve it with the bank because he does not think he should be liable for the entire amount. His medical debts are less than \$3,000, and he has no other current debts which are delinquent.

Applicant's alcohol and marijuana use occurred in the past, and was to his detriment. He consumes beer now at home, and does not use marijuana. Applicant has changed his behavior patterns as he matured and got married. As a father with a child at home and another child he supports, he recognizes his primary obligations are to other persons, and not to his own pleasures. It is unlikely his past alcohol and marijuana actions will be repeated. There is little chance of pressure, coercion, exploitation, or duress in Applicant's life as a result of this personal history.

Applicant was direct and forthright in his explanation of his past circumstances. The only debt left unresolved is the mortgage on his former home. Applicant is resolving his minor debts. He extricated himself from the drugs and alcohol abuse problem. His mortgage debt can also be resolved when he has the finances and he applies the same effort as he has to his other situations. Applicant was credible and persuasive in his discussion of his past problems and debts.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations, alcohol consumption, and drug involvement. I conclude the "whole-person" concept for Applicant.

### **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 to 1.d:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a to 2.c:	For Applicant
Paragraph 3, Guideline H:	FOR APPLICANT
Subparagraphs 3.a to 3.c:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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PHILIP S. HOWE  
Administrative Judge