



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-17921
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: D. Michael Lyles, Department Counsel  
For Applicant: *Pro Se*

January 23, 2009

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**Decision**

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TESTAN, Joseph, Administrative Judge:

On May 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines J, E, G and F. 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 answered the SOR in writing on July 25, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on August 14, 2008. Applicant did not file a response to the FORM. The case was assigned to me on December 12, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

Applicant is a 48 year old employee of a defense contractor.

In or about November 1981, applicant was arrested and charged with (1) Breaking and Entering with Intent to Steal and (2) Theft. He was convicted of the Theft charge and fined.

In or about December 1981, applicant was arrested and charged with (1) Breaking and Entering and (2) Theft, both felonies.

In or about February 1982, applicant was arrested and charged with Malicious Destruction of Property. He was convicted of the charge and sentenced to one year in jail.

In or about February 1982, applicant was charged with (1) Breaking and Entering and (2) Theft.

In 1984, applicant was arrested and charged with Theft three separate times. There is no credible evidence that any of the arrests resulted in a conviction.

In 1985, applicant was arrested and charged with (1) Disorderly Conduct and Prowling and (2) Loitering. He was convicted and sentenced to two days in jail.

In 1986, applicant was arrested and charged with (1) Driving Under the Influence (DUI), (2) Driving While License Suspended or Revoked, and (3) Reckless Driving. The DUI charge was dropped, and applicant was convicted of the other two charges. He was sentenced to one day in jail.

In 1987, applicant was arrested and charged with Contempt of Court in connection with a prior reckless driving case against him.

In 1988, applicant was arrested for, charged with, and convicted of Burglary and Possession of Burglary tools, both felonies, and sentenced to three months in jail.

In 1990, applicant was convicted of selling or consuming alcoholic beverages on city property and was sentenced to one day in jail.

In 1991, applicant was convicted of Driving with No Valid Drivers License and was sentenced to two days in jail.

In 1992, applicant was twice convicted of Driving While License Suspended or Revoked. He was sentenced to two days in jail on the first conviction and ten days in jail on the second.

Applicant is indebted to the IRS in the approximate amount of \$17,773.00 for back taxes.

Applicant is indebted to NCO Financial in the approximate amount of \$1,442.00 on an account that was referred for collection.

Applicant is indebted to AAC in the approximate amount of \$3,338.00 on an account that was referred for collection.

Applicant is indebted to ACE on an account that is more than 180 days delinquent in the approximate amount of \$300.00.

Applicant attached to his SOR response a copy of a money order in the amount of \$100.00 made payable to the IRS. He provided no explanation.

### **Policies**

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## Analysis

### **Guideline J, Criminal Conduct**

The security concern for criminal conduct is set forth in Paragraph 30 of the AG, and is as follows:

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.

Paragraph 31 describes conditions that could raise a security concern and may be disqualifying: Under Paragraph 31.a., "a single serious crime or multiple lesser offenses" may be disqualifying. Applicant's multiple convictions raise this disqualifying condition.

Paragraph 32 of the AG sets forth conditions that could mitigate security concerns. I have considered each of them and conclude none apply.

### **Guideline E, Personal Conduct**

All of the Guideline E factual allegations, except for applicant's three driving-related criminal charges in 1991 and 1992, were alleged under Guideline J. There is no legitimate reason why these three criminal offenses were not included with all of the other criminal conduct alleged under Guideline J. Because this is not a legally proper use of Guideline E, it is found for applicant.

### **Guideline G: Alcohol Consumption**

The security concern for alcohol consumption is set forth in Paragraph 21 of the AG, and is as follows:

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.

The evidence the Government offered in support of its case under Guideline G is that (1) in 1986, applicant was arrested and charged with DUI, and the charge was dismissed, and (2) in 1990, he was convicted of selling *or* consuming alcoholic beverages on city property. A 20+ year old DUI charge without a conviction and a low level alcohol-related conviction over 17 years ago that might or might not have involved alcohol consumption, do not establish a *prima facie* case under Guideline G. This guideline is therefore found for applicant.

## **Guideline F, Financial Considerations**

The security concern relating to Financial Considerations is set forth in Paragraph 18 of the new AG, and is as follows:

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.

The AG note several conditions that could raise security concerns. Under Paragraph 19.a., an "inability or unwillingness to satisfy debts" is potentially disqualifying. Under Paragraph 19.c., "a history of not meeting financial obligations" may raise security concerns. The evidence shows applicant has a history of not paying his debts. Accordingly, these disqualifying conditions are applicable.

I considered all of the potentially mitigating factors under Guideline F and conclude none apply.

## **Whole Person" Analysis**

Under the whole person concept, the AJ must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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) 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." Under AG Paragraph 2c, the ultimate determination of whether to grant a security clearance must be an overall common sense 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 a mature man with a long history of serious criminal conduct and financial delinquencies. Although the passage of time since his last criminal activity occurred is a factor in his favor, he offered no positive evidence of reform from people who know him well. Without such evidence, I cannot conclude that his criminal conduct will not recur. With respect to his financial delinquencies, applicant provided no explanation for them, and offered little to no credible evidence of any meaningful action to address them. Based on the foregoing, I conclude applicant failed to mitigate the security concerns arising under Guidelines F and J.

### **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 J: AGAINST APPLICANT

Paragraph 2, Guideline E: FOR APPLICANT

Paragraph 3, Guideline G: FOR APPLICANT

Paragraph 4, Guideline F: AGAINST APPLICANT

### **Conclusion**

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

JOSEPH TESTAN  
Administrative Judge