



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 08-00169  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

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

April 15, 2010

**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Criminal Conduct security concerns, but he has not mitigated the Financial Considerations and Personal Conduct concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J (Criminal Conduct), F (Financial Considerations), and E (Personal Conduct). The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG).

Applicant answered the SOR on February 3, 2009. The case was assigned to me on January 14, 2010. DOHA issued a notice of hearing on January 22, 2010, and the

hearing was convened as scheduled on February 23, 2010. DOHA received the transcript of the hearing (Tr.) on March 2, 2010.

## **Procedural and Evidentiary Rulings**

### **Motion to Amend SOR**

Department Counsel submitted an amendment to the SOR dated December 16, 2009. The amendment modified SOR ¶ 1.d and added SOR ¶¶ 2.i through 2.k. Applicant did not receive the amendment until the day of his hearing. The amendment was granted. Applicant responded to the amendment at his hearing. He declined the offer of a continuance to address the amendment, but accepted holding the record open for him to submit additional documentary evidence.

### **Evidence**

The Government offered Exhibits (GE) 1 through 10, which were received without objection. Applicant testified on his own behalf but did not submit any documentary evidence. The record was held open for Applicant to submit additional information. Applicant submitted documents, which were marked Exhibits (AE) A(1) through A(16) and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I.

## **Findings of Fact**

Applicant is a 36-year-old employee of a defense contractor. He has worked for his current employer since April 2007. He is seeking to obtain a security clearance. He has a General Educational Development (GED) high school equivalency diploma, and he attended vocational school from 2005 to 2007. He was married from 1996 until 2001. He married again in 2002. He has an eight-year-old child and two teenage stepchildren. One of his stepchildren lives with the child's father.<sup>1</sup>

Applicant has experienced financial difficulties for a number of years. He filed Chapter 13 bankruptcy in 2001. The bankruptcy was converted to Chapter 7 in 2003. His debts were discharged in 2003.<sup>2</sup>

Applicant worked for a company from 2001 to 2004, repairing small mechanical items. Over a period of time, he stole numerous parts of the mechanical items, power tools, and other equipment from the company. A co-worker informed Applicant's employer, who called the police. Applicant completely denied any involvement in the thefts when he was questioned by the police on March 5, 2004. He confessed to the police after he was arrested on March 16, 2004. He was charged with the felony offense of theft of property valued at between \$1,500 and \$20,000. He pled guilty and received

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<sup>1</sup> Tr. at 23-26, 52-53; GE 1.

<sup>2</sup> Tr. at 30; Applicant's response to SOR; GE 3, 5.

a deferred adjudication with community supervision for three years. Terms of his supervision included 200 hours of community service, a course on theft that was completed by mail, and court costs. He satisfied all the terms of his probation and was released from probation in 2007. The charge was dismissed after the probation was completed.<sup>3</sup>

Applicant was questioned for his background investigation in 2007. He told the investigator that he did not plan to sell the parts or use them to build a power tool for his own use. He verified the accuracy of that statement in response to a DOHA interrogatory in 2008. He admitted at his hearing that he planned on using the parts for his own business in competition with his employer, and he also planned on selling some of the items. He testified that he took items home unintentionally for about three months and then intentionally stole items for about three months. He told the police after he was arrested that he had started stealing the parts about 18 months before he was arrested. Applicant estimated the value of the property he stole at about \$7,000.<sup>4</sup>

Applicant expressed remorse and embarrassment about his crimes. There is no evidence of any other arrests or other involvement in criminal activities. Applicant's friends and family are aware of his criminal record.<sup>5</sup>

The SOR, with the amendments, allege the Financial Considerations concerns as Applicant's bankruptcy, nine delinquent debts, with balances totaling about \$23,824, and a home mortgage that was \$1,000 past due. Applicant admitted owing the debts alleged in SOR ¶¶ 2.d, 2.h, 2.i, and 2.j. He denied owing the debts in the other allegations.

Applicant established that he has paid or settled the debts alleged in SOR ¶¶ 2.b, 2.c, 2.e, 2.f, and 2.h. Several of the debts were paid in 2008. The total amount of those debts, as alleged in the SOR, is \$2,390. On March 2, 2010, he brought his home mortgage current with three payments of \$1,049 each. That debt was alleged in SOR ¶ 2.j. He established that the \$10,370 debt alleged in SOR ¶ 2.g was discharged in his 2003 bankruptcy.<sup>6</sup>

Applicant denied owing the \$420 medical debt alleged in SOR ¶ 2.k. This debt was listed on an Experian credit report obtained on May 20, 2009. It is not listed on the Equifax credit report obtained on December 16, 2009.<sup>7</sup>

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<sup>3</sup> Tr. at 28, 31-36; Applicant's response to SOR; GE 1, 3, 4.

<sup>4</sup> *Id.*

<sup>5</sup> Tr. at 35-36; GE 3.

<sup>6</sup> Tr. at 40-45; Applicant's response to SOR; GE 2; AE A(1)-A(13).

<sup>7</sup> Tr. at 45; GE 6, 7.

Applicant has two remaining delinquent debts to be resolved. SOR ¶ 2.d alleges a delinquent student loan of \$8,390 owed to the vocational school he attended. He submitted documentation that he has requested a graduated repayment plan for student loans administered by Sallie Mae, requesting two years of reduced payments. He stated he has been unable to contact the creditor identified in SOR ¶ 2.d, but he is continuing his efforts. It is unclear if the debt listed in SOR ¶ 2.d represents the same loans administered by Sallie Mae or a different loan.<sup>8</sup>

Applicant admitted owing the \$2,254 debt alleged in SOR ¶ 2.i. Applicant's wife had an accident in their car, resulting in a total loss. The amount still owed on the car loan after the insurance paid the fair market value of the car was \$2,254. Applicant made payment arrangements to pay this debt with 24 monthly payments of \$100. He made a payment of \$100 on March 23, 2010.<sup>9</sup>

Applicant attributed the financial problems that led to his bankruptcy to his first wife and his divorce. His current wife returned to school to be a nurse. Applicant and his wife knew they could not pay all their debts while she was in school. They decided they would be better off in the long run if they sacrificed paying their debts while she was in school, and then pay them after she started working as a nurse. Applicant's wife is now working and attending school part-time. Applicant has not received financial counseling. He and his wife can pay their current bills with their income, but they do not have much excess. He anticipates paying his remaining delinquent debts with his overtime pay.<sup>10</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, the administrative judge applies 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.

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<sup>8</sup> Tr. at 24, 36-38; GE 1, 2; AE A(14), A(15).

<sup>9</sup> Tr. at 43-44; AE A(14), A(16).

<sup>10</sup> Tr. at 30, 37-39, 45-53; GE 3.

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, 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 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 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 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant’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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant committed serious crimes when he stole about \$7,000 worth of parts and equipment from his employer. Both of the above disqualifying conditions are established.

Two Criminal Conduct mitigating conditions under AG ¶ 32 are potentially applicable:

(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; and

(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.

Applicant's criminal behavior happened about six years ago. It was not an isolated event because it occurred on numerous occasions over an extended period. There is no evidence of any other arrests or similar behavior. Applicant appeared sincerely remorseful and embarrassed about his crimes at his hearing. He successfully completed the terms of his community supervision. He attended vocational school in 2005 to 2007. He has a stable work record since the crime. AG ¶ 32(a) is not applicable because the crimes continue to cast doubt on his reliability, trustworthiness, and good judgment, but there is evidence of rehabilitation, warranting the application of AG ¶ 32(d).

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

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant's crimes support a whole-person assessment of questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules and regulations. The conduct created a vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(c) is not applicable for the same rationale discussed under the Criminal Conduct analysis. Applicant submitted evidence of rehabilitation and remorse. However, the criminal acts occurred over an extended period. I cannot make an affirmative finding that the behavior is unlikely to recur. AG ¶ 17(d) is partially applicable. Applicant's actions are common knowledge, which has lessened his vulnerability to coercion, exploitation, and duress. AG ¶ 17(e) is partially applicable.

In sum, I conclude that Personal Conduct concerns are still present despite the presence of some mitigation.

## **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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

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

Applicant's bankruptcy was filed about nine years ago, and his debts were discharged seven years ago. Those events, standing alone, are not recent enough to constitute a security concern. AG ¶ 20(a) is applicable to his bankruptcy. He accrued additional delinquent debts after the bankruptcy and still owes two debts amounting to more than \$10,000. His financial issues are current and ongoing. AG ¶ 20(a) is not applicable to his recent financial problems.



Applicant attributed the financial problems that led to his bankruptcy to his first wife and his divorce. These events qualify as conditions that were outside his control. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant started stealing from his company before, or shortly after, his debts were discharged in bankruptcy. That is completely irresponsible conduct. His more recent debts resulted from a conscious decision to stop paying his debts while his wife was in school. That does not constitute an event that was outside his control. AG ¶ 20(b) is partially applicable to his bankruptcy. It is not applicable to his recent financial problems.

Applicant has not received financial counseling. He paid or settled about \$2,390 worth of debts, but he still has more than \$10,000 in debts to address. His efforts at paying his delinquent debts are not yet sufficient to qualify as a good-faith effort to pay or resolve his debts. He has not established clear indications that the problem is being resolved or is under control. AG ¶¶ 20(c) and 20(d) are not applicable.

Applicant established that the debt alleged in SOR ¶ 1.g was discharged in his bankruptcy. He denied owing the \$420 medical debt alleged in SOR ¶ 2.k. That debt was listed on a May 2009 credit report, but not on a more recent credit report. AG ¶ 20(b) is applicable to those two debts.

I conclude that Applicant's finances remain a concern despite the presence of some mitigation.

### **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 relevant 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.

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. I have incorporated my comments under Guidelines J, E, and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant appeared remorseful and embarrassed about his crimes. There is no evidence of other criminal activities. However, this was not a spur of the moment action. His crimes took place repeatedly over three or more months. The thefts occurred around the same time as his bankruptcy. He again has financial problems that are unresolved.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated Criminal Conduct security concerns, but he has not mitigated the Personal Conduct and Financial Considerations concerns.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	For Applicant
Subparagraph 2.d:	Against Applicant
Subparagraphs 2.e-2.h:	For Applicant
Subparagraph 2.i:	Against Applicant
Subparagraphs 2.j-2.k:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against 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.

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Edward W. Loughran  
Administrative Judge