



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
)  
----- ) ISCR Case No. 08-06015  
SSN: ----- )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Glendon, Esquire, Department Counsel  
For Applicant: *Pro Se*

September 30, 2009

**Decision**

WESLEY, Roger C., Administrative Judge:

**Statement of Case**

On January 24 2009, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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 March 4, 2009, and requested a hearing. The case was assigned to me on June 19, 2009. The case was scheduled for hearing on June 29, 2009. A hearing was held as scheduled, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, or deny, Applicant's application for a security clearance. At hearing, the Government's case consisted of 10 exhibits (ex.); Applicant relied on two witnesses (including himself) and four exhibits. The transcript (Tr.) was received August 6, 2009. Based upon a

review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Procedural Issues**

Before the close of the appearance, Applicant asked for additional time to supplement the record with documented child support payments. For good cause shown, Applicant was granted seven days to supplement the record. Within the time permitted, Applicant supplemented the record with copies of his most recent child support payments to the state's department of social services on behalf of his three daughters. The submissions are accepted as Applicant's exhibit E.

### **Summary of Pleadings**

Under Guideline J, the SOR alleges that Applicant: (a) was charged in April 1991 with four counts of cocaine distribution near school property and four counts of possession of controlled drugs with intent (both felonies), convicted of drug possession with intent (with the remaining charges *nolle prosequere*), sentenced to 16 years of imprisonment (six years suspended) and fined \$100; (b) was charged in December 1998 with possession of cocaine (a felony) and driving on a suspended operator's license (a misdemeanor), with the charges *nolle prosequere*; (c) was charged in August 2000 with trespassing (dismissed); and (d) falsified his January 2007 security clearance application (e-QIP) in violation of 18 U.S.C. § 1001 (a felony) (incorporated under Guideline E).

Under Guideline E, the SOR alleges Applicant falsified his January 2007 e-QIP by omitting his 1998-2000 criminal charges and his debts over 180 days and 90 days delinquent, respectively.

Under Guideline F, the SOR alleges Applicant accrued (a) eight delinquent debts exceeding \$3,000, (b) back child support of \$10,176, and (c) an unsatisfied adverse judgment that was entered in April 2004 for child support arrearage of \$385.

For his answer to the SOR, Applicant admitted most of the allegations. He admitted each of the criminal charges and disposition, while denying any intent to falsify his security clearance application. He admitted all but one of his alleged debts: his creditor 3.g debts, which he could not identify.

### **Findings of Fact**

Applicant is a 40-year-old maintenance trade helper of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Applicant married his current wife in 2007 and has six children by various women (Tr. 109-14). Two of the children were born to Applicant and his wife before their marriage (Tr. 126). Three of his children currently live with him and his wife (Tr. 109-10). The remaining three children live with their mothers.

Applicant began selling drugs in early 1991 at the age of 21 to support his mother who had been evicted from their apartment and had no place to live (see ex. 10). In April 1991, he sold cocaine to an undercover police officer near an elementary school and was arrested (see ex. 10; Tr. 48). When he appeared in court in April 1991 to answer cocaine distribution and possession charges, he pleaded guilty to four counts of cocaine possession with the intent to distribute and was sentenced to 16 years of imprisonment (6 years suspended) and fined \$100 (see exs. 5, 9, and 10). Applicant completed two years of his prison sentence before he was released in July 1993 (see ex. 10; Tr. 48-49).

Following his 1993 prison release, Applicant served two years (1993-1995) of parole. From 1995 through 2003 (about eight years), he was on unsupervised probation (see exs. 5 and 10; Tr. 49-50). He has since paid all but \$385 of his court-imposed fine (which has since accrued considerable interest) stemming from his 1991 conviction, and he has satisfied all of the court's sentencing and probation conditions (see exs. 10, A and B; Tr. 52-53).

In December 1998, Applicant was arrested for possession of cocaine (a felony) and driving on a suspended license (a misdemeanor) (see ex. 3). He was stopped and searched by police before he was arrested and transported to the local police station. Upon his arrival at the police station, he was booked and escorted to court for arraignment before a local magistrate (Tr. 44-45). Applicant assures he was not aware of his license suspension until after his arrest (Tr. 55-57). Records report that the charges were *nolle prossed*. Applicant's claims and denials are not challenged in the record and are accepted.

On August 5, 2000, Applicant was charged with trespassing by local police (see ex. 4). The arresting police, according to Applicant, thought he was trying to accost a woman and charged him with trespass (Tr. 45). Applicant assured that the woman was his mother who he was trying to help (Tr. 59-60). The charges were dismissed, and Applicant's account is accepted (see ex. 3).

### **Appellant's SF-86 omissions**

Asked to complete an e-QIP in January 2007 (see ex. 2), Applicant omitted his 1991 drug distribution charges and conviction as well as his 1998 and 2000 charges. He attributes his omissions to confusion and misunderstanding of the questions (Tr.63-66). He claimed to believe the question asked for charges and convictions within the last seven years and excluded arrests that did not result in convictions (Tr.67-77). Even with the discounting of Applicant's comprehension skills, his explanations are not convincing under all of the circumstances associated with his omissions. Questions

23(a) and (b) clearly place no time limitations on covered arrests, charges, and convictions. Aware of all of his arrests, charges and convictions, he took more than two days to consider the questions before answering “no” to the questions pertaining to his prior arrests. Were he uncertain about any terms in the questions, he could have commented in the in section 30 of the question. He provided no additional comments, however, in the space provided for in section 30.

Applicant also failed to disclose his child support arrearage and other debts when he was asked in question 28 whether he had any debts over 180 days delinquent or currently over 90 days delinquent. Applicant attributes these debt omissions to his mistaken understanding of the question (claiming he did not believe the question covered child support arrearage) (Tr. 81-87).

Applicant’s claimed misunderstandings are neither plausible nor credible. Section 28 is quite clear in the language it employs to inquire about an individual’s delinquent debts. The subpart questions are straight-forward and make no attempt to classify particular kinds of debts. Applicant was quite aware of his child support arrearage, some of which originated before he was incarcerated (Tr. 84-85). Applicant’s omissions reveal a disposition to omit as much relevant material about his finances as he could possibly claim without drawing attention to himself. His answers lack credibility, though, and cannot avert credible findings that his debt omissions were either deliberate or made with reckless disregard for the truth. Applicant’s explanations, considered as a whole, reflect a conscious decision on his part to omit his adverse criminal charges and conviction.

In April 2007, an investigator from the Office of Personnel Management (OPM) contacted Applicant to interview him regarding his 1991 felony cocaine distribution charges (see ex. 10). From the tenor of the introduction, it is clear that the investigator knew about the 1991 charges in advance of the interview and wanted to question Applicant about the charges. The summary produced a detailed account of Applicant’s past drug use and involvement in the 1991 incident, and provides ample indicia of the investigator’s confronting Applicant with the 1991 charges before inquiring about additional details (ex. 10). Applicant was apparently never asked about any other arrests or delinquent debts, and disclosed no information about any of them (inclusive of child support arrearage). The OPM summary of interview itself contains no mention of Applicant’s other arrests/charges, or anything about his debts and finances. Without any manifest disclosure of his other arrests/charges and the details of his aged child support arrearage and other delinquent debts, he cannot be credited with any good-faith corrections.

Records reveal that Applicant was laid off for a two-month period in 2008 (*i.e.*, January to March 2008). When he was recalled to work in March 2008 (Tr. 51-52), he was asked to complete another e-QIP (ex. 1). When answering question 23(a), this time he listed his 1991 conviction. Once again, though, he did not list his 1998 and 2000 arrests, or any of his delinquent debts in the space provided by question 28. Nor

did he mention any of his arrests/charges or debts (inclusive of his child support arrearage) in the remarks section of question 30.

While Applicant is to be commended for providing details of his 1991 conviction when asked about it by the OPM investigator in April 2007, he cannot be credited with providing prompt, good-faith corrections of his earlier omissions. His corrections were neither prompt nor complete. When asked why he did not add his 1998 and 2000 charges to the 1991 charges he disclosed in his 2008 e-QIP, he provided a new explanation: no convictions emanating from either charges. These explanations are not credible either. They reflect a continued disposition by Applicant to disclose as little adverse information about his arrest history as he could without detection.

### **Applicant's debt accruals**

Applicant's accumulated child arrearage is quite old and has gathered considerable interest over the years. His 2008 credit reports revealed a \$10,176 child support arrearage and a \$385 child support judgment (see exs. 6, 7 and 8; Tr. 100-01). Applicant admits to fathering three children by three different women out of wedlock, for which he became obligated to pay child support. He identified just two children in his e-QIPs and provided payment information in his 2008 interrogatory responses (ex. 9) as follows: a net arrearage of \$748 in July 2008 on one daughter (account A) after crediting monthly payments over a six-month period spanning April and July 2008 and a net arrearage of \$7,997 on another daughter (account B) after crediting monthly payments over a six-month period spanning March and July 2008 (see ex. 9; Tr. 100).

Applicant provided more details of his child support payments in post-hearing case information sheets (ex. E). In these case information sheets prepared by his state's department of social services, he documents further payments on his account A arrearage and a reduced balance of \$158 (ex. E; Tr. 100). His updated case information on his account B arrearage reveals further payments within the past six months and a reduced arrearage of \$5,988 (ex. E; Tr. 100).

And on an arrearage account (account C) not previously discussed, he provided updated case information that shows an arrearage balance of \$1,158. Applicant assures he will continue to make his required monthly payments on these child support arrearage accounts, but furnishes no details. He provides no information either on how he plans to satisfy the still outstanding \$385 child support judgment. His child support payment history is a checkered one to date and provides little reason to make safe payment predictions. His documented child support arrearage accounts reveal years of financial neglect, followed by brief bursts of payments on his arrearage accounts when faced with job and clearance pressures. His payment history does not lend itself to any reliable track record of steady child support payments during the periods when his children and their mothers most needed his support.

Remaining delinquent debts listed in his credit reports and covered in the SOR include his creditor 1.a debt for \$830. Applicant documents his payment of \$40 on this

debt in June 2009, leaving a balance of \$760. He provides no further documentation of any payments on his remaining delinquent accounts (mostly medical and credit card accounts) (Tr. 88-983). His remaining accounts are six in number and exceed \$1,600 in total debt (see ex. D).

Applicant provided no repayment plan for these debts, but does show a net monthly remainder of \$580 on the personal financial statement he attached to his 2008 interrogatory responses (ex. 9). He is current on his rent and car payments has no credit cards (Tr. 102). He assured that once he completes his child support and car payments, he will be able to address his remaining old debts (Tr. 98).

### **Endorsements and awards**

Applicant did not provide any company performance evaluations or any commendations he may have earned. Endorsements from his supervisors who have worked with him for several years describe him as reliable and punctual and a solid professional who works well with others (see ex. D). His wife of two years describes him as honest (Tr. 126).

### **Policies**

The revised Adjudicative Guidelines (AGs) 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 AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2(a)(1-9) of the AGs, and evaluate the individual in the context of the whole person, 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:

### **Criminal Conduct**

*The Concern:* 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. AG, ¶ 30.

### **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. AG, ¶ 15.

### **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.

### **Burden of Proof**

Under 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 commonsense 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. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-clearance

determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

## **Analysis**

Applicant is a meritorious civilian employee of a defense contractor who was charged and convicted of drug distribution in 1991 and served 2 years of a 16-year sentence (six suspended). He was twice charged again for unrelated offenses (*not* *prossed* and dismissed, respectively) and falsified his security clearance application. Considered together, Applicant’s actions create sufficient indicia of a pattern criminal conduct to raise security concerns under the criminal conduct guideline. Applicant’s e-QIP omissions raise security concerns separately under the personal conduct guideline. Security concerns are raised, too, over Applicant’s finances based on his still outstanding child support arrearage, and to a lesser extent, his unpaid consumer accounts.

### **Criminal conduct concerns**

By itself, Applicant’s 1991 felony drug distribution conviction is serious enough to be security-significant, notwithstanding it is somewhat dated. When combined with his ensuing felony drug possession charges in 1998, his trespass charges in 2000, and the potential criminal implications of his e-QIP omissions in 2007 and 2008, security concerns are clearly presented under Guideline J.

Applicant’s recurrent charges and related e-QIP omissions warrant initial consideration of two disqualifying conditions of the AGs for criminal conduct: DC 31a, “a single serious crime or multiple lesser offenses,” and DC 31c, “allegation or admission of criminal conduct, regardless of whether the person was formally charged.” While Applicant’s most recent arrests were either not prosecuted or were dismissed, they create a pattern of criminal arrests that are linked more recently with his e-QIP omissions that have potentially criminal implications.<sup>1</sup>

Without any evidence to challenge Applicant’s explanations of the underlying events and circumstances surrounding his 1998 and 2000 charges, the criminal conduct concerns that are based on his two ensuing offenses are not substantiated. His more recent e-QIP omissions reflect recurrent conduct that cannot be considered honest and forthcoming. His omissions, as such, must be considered recurrent criminal conduct that cannot be totally separated from his earlier conviction by the passage of time.

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<sup>1</sup> Before January 2008, certain types of conduct were subject to mandatory prohibitions against the granting of security clearances under the Smith Amendment (10 U.S.C. § 986). Conduct subject to the Smith Amendment’s prohibition included convictions resulting in sentences of more than a year. However, this section of the U.S. code, which applied only to clearances granted by DoD, was repealed on January 28, 2008, when the President signed the National Defense Authorization Act for Fiscal Year 2008 into law. It was replaced by adding Sec. 3002 to 50 U.S.C. §435b (the Bond Amendment), which applies throughout the Federal government. Section 3002(c) continues the requirement of *per se* disqualification for certain convictions and sentences.



Applicant may rely on MC ¶ 32(c), “evidence that the person did not commit the offense,” of the guidelines for criminal conduct. The arrests by themselves are insufficient to warrant continuing security concerns about his judgment, reliability, and trustworthiness. And these ensuing charges are unsubstantiated. Applicant, though, does not satisfy the evidentiary requirements for taking advantage of any of the other mitigating conditions covered by the criminal conduct guideline. His e-QiIP omissions create lingering doubts about his trustworthiness and preclude the characterizing his earlier 1991 felony conviction as an isolated incident “that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, and good judgment” (see MC ¶ 32(a). Applicant’s recent e-QIP omissions preclude him also from applying MC ¶ 32(d) to his situation. MC ¶ 32(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” may not be applied to the facts in this record.

Both from a consideration of the applicable guidelines and from a whole person perspective, Applicant’s lacks the strength of demonstrated rehabilitation to meet all of the minimum requirements under the criminal conduct guideline for continued eligibility to hold a security clearance. Taking into account all of the facts and circumstances developed in the record, unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.d of the SOR.

### **Falsification issues**

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant’s omission of his 1991 felony conviction in his 2007 e-QIP and his multiple omissions of his other charges and debts over 180 days and 90 days delinquent, respectively, in both of his e-QIPs and his 2007 OPM interview. So much trust is imposed on persons cleared to see classified information that deviation tolerances for candor lapses are gauged very narrowly.

Mitigation is difficult to credit Applicant with, since he failed to promptly correct most of his initial e-QIP omissions in the follow-up Office of Personnel Management (OPM) interview and in his ensuing e-QIP he was asked to complete in 2008. By willfully and knowingly failing to disclose all of his known charges/convictions and delinquent debts in his initial 2007 e-QIP and (save for his 1991 conviction) in his follow-up OPM interview and ensuing 2008 e-QIP, Applicant concealed materially important background information needed for the government to properly process and evaluate his security clearance application. His attributed reasons for his omitting his arrest/charges/conviction and delinquent debts (*viz.*, beyond seven years and lacking convictions with respect to his charges and not a defined debt regarding his debts) are not sustainable grounds for averting inferences of falsification. Weighing all of the circumstances surrounding his multiple e-QIP omissions and lack of any prompt, good-faith corrections of all of his omissions, Applicant’s claims lack the necessary probative

showing to avert drawn conclusions that he knowingly and deliberately withheld material background information about his prior arrest/charges.

Considering all of the evidence produced in this record and the available guidelines in the AGs (inclusive of the 2(a) factors), unfavorable conclusions warrant with respect to subparagraphs 2.a through 2.e of Guideline E.

### **Financial issues**

Security concerns are raised here under the financial considerations guideline of AG ¶ 18 of the Directive. Under this guideline, “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” AG ¶ 18. Applicant’s outstanding child support obligations (some covered by a small judgment), and to a lesser extent his still delinquent consumer debts warrant the application of two of the disqualifying conditions (DC) of the AGs for financial considerations: ¶ 19(a), “inability or unwillingness to satisfy debts” and ¶ 19(c), “a history of not meeting financial obligations.”

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 explicit in financial cases (as here) and bring into play security concerns covered by the financial considerations guideline.

Extenuating circumstances are not clearly associated with either Applicant’s child support obligations covering children for which he acknowledged paternity or his delinquent consumer debt. Based on the circumstances presented here, 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,” has no visible applicability to Applicant’s financial difficulties.

Since receiving the SOR, Applicant has made some additional efforts to address his child support arrearage. So far, he has not made any tangible attempts to resolve his other debts, despite a reported favorable net monthly remainder. His recent efforts to resolve his child support arrearage (while encouraging) are not enough to establish a meaningful track record for discharging all of his listed debts. His repayment efforts to date are insufficient to warrant application of MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

Applicant provides no evidence either of any financial counseling or personal budgeting. Without any documented counseling or budgeting in the record, MC ¶ 20(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,” may not be applied.

From a whole person standpoint, Applicant fails to provide sufficient documented support from his employer, friends, or acquaintances who are familiar with his work and community contributions, for establishing the level of good judgment, reliability and trustworthiness necessary to satisfy minimum requirements for holding a security clearance. To his credit, Applicant exhibits remorse for his indiscretions. His lifestyle changes to date do reflect some improvements in managing his finances and are to be encouraged. At the same time, his efforts in restoring sound managerial control over his finances remain a work in progress and require additional seasoning before safe predictions can be made that his finances are safely stabilized and averse recurrence risks.

Taking into account all of the presented mitigation considerations in this case, Applicant fails to mitigate judgment, reliability, and trustworthiness concerns related to his accumulation of child support arrearage and other delinquent debts. Unfavorable conclusions warrant with respect to the allegations covered by the financial considerations guideline.

In reaching my decision, I have considered the evidence as a whole, including each of the 2(a) factors enumerated in the AGs.

### **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 J: (CRIMINAL CONDUCT):	AGAINST APPLICANT
Sub-paras. 1.a and 1.d:	Against Applicant
Sub-paras. 1.b and 1.c:	For Applicant
GUIDELINE E: (PERSONAL CONDUCT):	AGAINST APPLICANT
Sub-paras. 2.a through 2.e:	Against Applicant
GUIDELINE F: (FINANCIAL CONSIDERATIONS):	AGAINST APPLICANT
Sub-paras. 3.a through 3.i:	Against 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