



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



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-06777

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel

For Applicant: *Pro se*

September 23, 2009

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**DECISION**  
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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Questionnaire for Sensitive Positions (SF86), on January 8, 2008 (Item 5). On March 4, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant detailing the security concerns under Guidelines H 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR and requested a decision without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on May 19, 2009. The Applicant received the FORM on June 2, 2009, and was given 30 days to submit any additional information. He elected not to submit anything further. The case was assigned to me on August 5, 2009. Based upon a

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

### **Findings of Fact**

The Applicant is 50 and single. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

#### **Guideline H - Drug Involvement**

The Government alleges under Guideline H that the Applicant is ineligible for clearance because he has used illegal drugs. The Applicant admitted all of the allegations under this paragraph in the SOR. These admissions are hereby deemed findings of fact.

The Applicant has held a Department of Defense security clearance since January 23, 2003. (Item 10.) The Applicant admits he used cocaine at least three times between May and August 2007. In an unsworn declaration regarding interviews taken between January 22 to January 26, 2008, it was stated, "[The Applicant] could not recall the exact number of times he used the cocaine and believes it might have been as many as ten times." (Item 7 at 5.) The Applicant maintains that he stopped using cocaine in August 2007, and has no intention of using cocaine or any other illegal drug in the future. (Item 7 at 6.)

Ms. A has been the Applicant's roommate since January 2006. From January 2006 until May 2007, when he began using cocaine with her, the Applicant often witnessed Ms. A use cocaine in his house. (Item 7 at 6.) The Applicant spent at least \$2,000 on cocaine during the four-month period when he was using cocaine with Ms. A. The cocaine was bought by Ms. A, using money given to her by the Applicant. As of January 2008, she continued to live in the Applicant's house with him. (Item 7 at 7-8.)

#### **Guideline F - Financial Considerations**

The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admitted all of the allegations under this paragraph. Those admissions are hereby deemed findings of fact.

2.a. The Applicant admits that he is indebted to a bank on a credit card account in the amount of \$6,864. (Item 6 at 10; Item 8 at 1; Item 9 at 5.) This debt has not been paid.

2.b. The Applicant admits that he is indebted on a credit card account in the amount of \$5,841. (Item 8 at 1; Item 9 at 5.) This debt has not been paid.

2.c. The Applicant admits that he is indebted on a second credit card account in the amount of \$7,839. (Item 6 at 10; Item 8 at 2; Item 9 at 2.) This debt has not been paid.

2.d. The Applicant admits that he is indebted to a department store in the amount of \$241. (Item 8 at 2; Item 9 at 15.) This debt has not been paid.

2.e. The Applicant admits that he is indebted to a third bank on a credit card account in the amount of \$2,471. (Item 8 at 2; Item 9 at 3.) This debt has not been paid.

2.f. The Applicant admits that he is indebted to a telephone company in the amount of \$132. (Item 8 at 2.) This debt has not been paid.

2.g. The Applicant admits that he is indebted to a collection agency for defaulted student loans in the amount of \$33,652. (Item 5 at 6; Item 6 at 2; Item 7 at 5.) The Applicant made a payment arrangement with the collection agency for his student loan debts. As of September 2008, he was paying \$250 a month towards this debt. (Item 6 at 8.) He submitted no evidence showing that this debt is continuing to be paid in a timely fashion. This debt has not been paid.

The Applicant admits that his financial situation was due, in part, to his purchases of cocaine in 2007. In addition, the Applicant gave Ms. A access to his bank account and one of his credit cards, which she used excessively. (Item 7 at 8.) The Applicant also admits that, as of January 2008, he did not have the money to pay his creditors. (Item 7 at 10.)

## **Policies**

Security clearance decisions are not made in a vacuum. 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 common sense 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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 H - Drug Involvement**

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

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. 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; Drug abuse is the illegal use of a

drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered the disqualifying conditions under Drug Involvement AG ¶ 25 and find that the following conditions apply given the facts in this case. AG ¶ 25(a), “any drug abuse; AG ¶ 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia”; and AG ¶ 25(g), “any illegal drug use after being granted a security clearance.”

The Applicant used cocaine at least three times, and possibly about ten times, in the two years preceeding the record closing in this case. He provided the money and had his roommate, also a drug user, buy the drugs for him. During the entire time he was using drugs, he had a security clearance and knew that using drugs was wrong. All of the above disqualifying conditions apply to the facts in this case.

I have considered all of the mitigating conditions under Drug Involvement AG ¶ 26 and find that none of them apply to the facts in this case concerning Applicant’s cocaine use. AG ¶ 26(a) states that it may be mitigating where “the behavior happened so long ago, was so infrequent or happened under circumstances that it is unlikely to recur or does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.” The Applicant’s drug abuse was of short duration, but obviously intense during that period. As stated, it ended less than two years before the record in this case closed. I find that, under the facts of this case, it is still too soon for this condition to apply.

Further, under AG ¶ 26(b), it may be mitigating where an applicant has “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 are used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.” The Applicant continues to live with Ms. A, who was a major contributing factor to this situation. He submitted no signed statement concerning an automatic revocation of his clearance, which would be mitigating. Finally, his period of abstinence, in this particular case, is insufficient. Paragraph 1 is found against the Applicant.

## **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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. AG ¶ 19(b) states that “indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt” is of security concern. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Finally, under AG ¶ 19(f), it may be disqualifying if the Applicant has “financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.” The Applicant, by his own admission, has over \$57,000 in past due debts, all of which have been due and owing for several years. He has revealed to the Government no plan to pay off these debts. Indeed, in his Answer, he states at page three, “Only time will allow me to correct the financial problems that I have at this time.” In addition, by his own admission, much of this occurred because of the drug habit he had in 2007. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial difficulties arose primarily after 2007. He submitted evidence showing that he has a payment plan concerning his student loans, but has not submitted any evidence showing that he has paid any of the other debts. The fact that the rest of the debts have been due and owing for so long is troubling. This mitigating condition is not applicable to this case.

The Applicant submitted no evidence showing that AG ¶ 20(b) is applicable. That condition states it may be mitigating where, “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.”

The Applicant has not initiated a good-faith effort to pay off his creditors. There is no track record of his making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that he is approximately \$57,000 in debt, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

Based on all of the available evidence, I cannot find that the Applicant has mitigated the allegations under this Guideline. Paragraph 2 is found against the Applicant.

### **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. 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a) in making such a determination:

(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.”

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant is a mature man who used cocaine, an illegal substance, in the recent past. He spent at least \$2,000 on the drug, lives with the person who introduced him to the drug, and has serious financial difficulties because of his drug use. In viewing all the facts of this case, I cannot find that the Applicant has mitigated the security significance of his prior conduct. As set forth above, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). In addition, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that there is a likelihood of recurrence (AG ¶2(a)(9)).

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from his drug involvement.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **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 H:	AGAINST THE APPLICANT
Subparagraphs 1.a. through 1.d.:	Against the Applicant
Paragraph 2, Guideline F:	AGAINST THE APPLICANT
Subparagraphs 2.a. through 2.g.:	Against the 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.

WILFORD H. ROSS  
Administrative Judge