



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 08-07605 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Tom Coale, Esquire, Department Counsel  
For Applicant: *Pro Se*

October 20, 2009

**Decision**

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is denied.

On February 5, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 5, 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 J (Criminal Conduct), and Guideline E (Personal Conduct). 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.

On April 30, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On July 2, 2009, Department Counsel prepared a File of Relevant Material (FORM) containing 15 Items, and he mailed Applicant a complete copy on July 6, 2009. Applicant received the FORM on July 10, 2009, and had 30 days from its receipt to file objections and submit additional information. Applicant timely submitted a document to which Department Counsel had no objection. On September 3, 2009, DOHA assigned the case to me. I subsequently marked Applicant's document as (AE) 1 and admitted it into the record.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all of the allegations contained in the SOR. Those admissions are incorporated herein.

Applicant is 34 years old. In September 2004, he separated from his wife with whom he has had a tumultuous relationship. In August 2006, he obtained sole custody of their child. Since December 2007, he has worked as a quality assurance inspector for a defense contractor. Prior to this position, he worked periodically as a construction laborer. From November 1995 to December 2004, he was an assembly line worker for an automobile manufacturer. He was terminated from that position after being injured in a car accident. He subsequently received a settlement from a lawsuit that he filed against the driver involved in the accident. (Item 4)

Based on credit bureau reports (CBR) dated February 2008, June 2008, and January 2009, the SOR alleged five judgments totaling \$13,765 that were filed against Applicant between 2007 and 2008. In his Answer, Applicant stated that all of the judgments were paid. During a March 2008 interview with an investigator, he produced a document, dated October 2007, from the creditor listed in SOR ¶ 1.a, indicating that the judgment was filed in error. (Item 5 at 5). Applicant provided proof that the judgments for medical bills alleged in SOR ¶ 1.b and SOR ¶ 1.f were paid from his settlement. (AE 1) He indicated that he paid the judgments alleged in SOR ¶ 1.c, SOR ¶ 1. d, and SOR ¶ 1.e through a garnishment, but did not provide proof of payment.<sup>1</sup> In October 2005, he filed a Chapter 7 bankruptcy, and in February 2006, the court discharged \$25,498 of his debt. He claimed that he accrued the debt after he lost his job in December 2004. (Item 4)

Applicant admitted that he has a history of criminal convictions. He admitted the eight misdemeanor convictions alleged in Paragraph 2 of the SOR:

(1) In April 1999, he was found guilty of No Dog License, fined \$25, and assessed \$40 in court costs.

(2) In June 1999, he was found guilty of Bad Check, sentenced to six months in jail (suspended), fined \$50, and assessed \$60 in costs.

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<sup>1</sup>These three judgments are owed to the same party for property damage that occurred when Applicant's car hit his neighbor's tree. (Item 4 at 27)

(3) In July 1999, he was found guilty of Driving Under Influence (DUI), sentenced to 60 days in jail (suspended), fined \$300, and assessed \$60 in costs.

(4) On June 16, 2004, he was found guilty of Assault and Battery, fined \$100, and assessed \$60.

(5) On that day, he was also found guilty of Destruction of Property, sentenced to 30 days in jail (20 days suspended), and assessed costs of \$90.00. These two charges involved his wife.

(6) On July 5, 2004, he was charged with Break and Enter (a felony). In October 2004, he pleaded guilty to Trespassing (a misdemeanor), sentenced to six months in jail (suspended), placed on one-year supervised probation, and assessed \$208 in costs. This charge involved his wife.

(7) In December 2005, he was found guilty of No Driver's License, fined \$75, and assessed \$91 in costs.

(8) In July 2007, he was found guilty of Driving Under Revocation/Suspension (a misdemeanor), was fined \$100, and assessed \$191 in costs.

Applicant admitted that he has been found guilty of 13 civil infractions since 1998, as alleged in Paragraph 3 of the SOR:

(1) In January 1998, he was found guilty of Speeding, fined \$39, and assessed \$40 in costs.

(2) In June 1999, he was found guilty of Disregard Red Light, fined \$50, and assessed \$50 in costs.

(3) In November 2002, he was found guilty of Disregard Highway Sign, fined \$40, and assessed \$57 in costs.

(4) In February 2004, he was found guilty of Speeding, fined \$200, and assessed \$75 in costs.

(5) In July 2004, he was found guilty of Reckless Driving, fined \$95, and assessed \$67 in costs.

(6) In February 2005, he was found guilty of Speeding, fined \$60, and assessed \$77 in costs.

(7) In April 2005, he was found guilty of Speeding, fined \$70, and assessed \$77 in costs.

(8) In July 2005, he paid a \$70 fine and \$57 in costs for a speeding charge.

(9) On December 5, 2005, he was found guilty of Expired Registration, fined \$25, and assessed \$10 in costs.

(10) On that day, he also was found guilty of Speeding, fined \$90, and assessed \$10 in costs.

(11) In October 2007, he was found guilty of No Inspection, fined \$30, and assessed \$82 in costs.

(12) In June 2008, he was found guilty of a HOV Violation, fined \$75, and assessed \$15 in costs.

(13) In June 2008, he was found guilty of Tinted or Smoked Windshield, fined \$75, and assessed \$86 in costs.

In his Answer to the SOR, Applicant explained that "I was involved in a bad relationship/marriage and going through hard times in my life. I am not the same person I was. I have gotten out of my marriage and now have full custody of my daughter which has changed my life completely." (Item 3 at 2) He indicated that his family and friends are aware of his history. (Item 5 at 14)

### **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.

Directive ¶ E3.1.14 requires the government to 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 the applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable clearance 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.”

## **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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Based on three CBRs and his statements, Applicant had been unable or unwilling to satisfy, until recently, the judgments that accrued between 2007 and 2008. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation. AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties, three of which may be applicable to this case:

(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; and

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

Applicant's financial problems arose prior to 2006 when he filed a bankruptcy and continued into 2007 and 2008, when five judgments were entered against him. Because the problems were ongoing and not isolated, AG ¶ 20(a) does not apply. Applicant filed bankruptcy after he was injured and lost his job in 2006. Those conditions were largely beyond his control. However, there is no evidence that he attempted to responsibly manage his debts while they were accruing, which is necessary evidence for full application of AG ¶ 20(b).

Applicant did not present any evidence that he received credit counseling and/or that all of his financial problems are under control, as required under AG ¶ 20(c). He submitted evidence that he resolved his early debts through a bankruptcy, paid two medical judgments, and resolved another; hence, AG ¶ 20(d) applies to SOR ¶ 1.a, SOR ¶ 1.b, SOR ¶ 1.f, and SOR ¶ 1.g. He is paying the remaining three judgments through a garnishment, which cannot be construed to be his good-faith effort to repay or resolve debts. Hence, AG ¶ 20(d) does not apply to SOR ¶ 1.c, SOR ¶ 1.d, and SOR ¶ 1.e.

## **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

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 ¶ 31 describes two conditions that could raise a security concern and may be disqualifying:

(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 admitted he was convicted of eight misdemeanors from April 1999 through July 2007. Both disqualifications were raised.

AG ¶ 32 provides two conditions that could mitigate security concerns raised under this guideline:

(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 last conviction, for a DUI, occurred in July 2007. Given his eight-year history of criminal offenses, the passage of two years without a subsequent incident is insufficient to trigger the application of AG ¶ 32(a). He stated in his Answer that he has changed his life since he obtained sole custody of his child. That is some evidence of rehabilitation and warrants a limited application of AG ¶ 32(d).

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

The security concern pertaining 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.

Applicant's multiple civil infractions over the past eight years demonstrate his unwillingness to comply with rules and regulations, and raise a question about his reliability and judgment under this guideline.

AG ¶ 17 provides three conditions that could mitigate security concerns raised under this guideline:

(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.

Applicant's history of criminal conduct and civil infractions cannot be considered minor or infrequent, and casts doubt on his reliability and good judgment. AG ¶ 17(c) does not apply. Although he admits his past problems, he has not presented evidence that he has participated in counseling or taken other steps to insure that similar problems will not recur, as required under AG ¶ 17(d). Applicant has acknowledged his wrongful conduct and has disclosed his history to his family and friends, which are steps that may eliminate vulnerability to duress or exploitation, and warrant a limited application of AG ¶ 17(e).

### **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). They include the following:

(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. Applicant is a young man who has a ten-year history of multiple criminal and civil problems and financial issues. Although he appears to be maturing, he has not yet established a significant pattern of responsible conduct in several aspects of his life or provided significant evidence of permanent behavioral changes. Until he does so, there is a strong likelihood that similar problems may recur. This pattern of irresponsible behavior indicates that he may be irresponsible in the handling of classified information. 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 failed to mitigate the security concerns arising from financial considerations, criminal conduct, and personal conduct.

### **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: | AGAINST APPLICANT |
| Subparagraph 1.a:         | For Applicant     |
| Subparagraph 1.b:         | For Applicant     |
| Subparagraphs 1.c – 1.e:  | Against Applicant |
| Subparagraph 1.f:         | For Applicant     |
| Subparagraph 1.g:         | For Applicant     |
| Paragraph 2, Guideline J: | AGAINST APPLICANT |
| Subparagraphs 2.a – 2.h:  | Against Applicant |
| Paragraph 3, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 3.a – 3.n:  | 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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SHARI DAM  
Administrative Judge