



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-10173  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel

For Applicant: *Pro se*

June 16, 2010

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP), on May 13, 2008 (Government Exhibit 1). On June 15, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations) and J (Criminal Conduct) concerning the Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on July 25, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 24, 2009. I received the case assignment on August 26, 2009. DOHA issued a notice of hearing on September 1, 2009, and I convened the hearing as scheduled on October 13, 2009. Government offered Government Exhibits 1 through 7, which were

received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through F, which were also received without objection. DOHA received the transcript of the hearing on October 22, 2009. Applicant requested the record remain open until October 30, 2009, in order for him to submit additional information. He did not submit any additional evidence and the record closed on October 30, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 26, and single. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

#### **Paragraph 1 - Guideline F, Financial Considerations**

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admits allegations 1.a. through 1.g. in the SOR. Those admissions are hereby deemed findings of fact. He denied allegations 1.h. through 1.j.

1.a. Applicant admits that he owes a creditor \$1,154 for a past due account. At the hearing, the Applicant expressed some confusion concerning the status of this debt. He was given an opportunity to submit evidence showing that this debt was paid or otherwise resolved. He did not submit any additional information. I find that this debt is Applicant's, it has not been paid, and he has no current intentions to pay this debt. (Government Exhibit 7; Transcript at 44, 65-66, 92-94.)

1.b. Applicant admits that he is indebted to a wireless telephone company in the amount of \$1,188 for a past due account. This debt has not been paid, and the Applicant has no current intentions to pay this debt. (Government Exhibit 7; Transcript at 44, 66-67.)

1.c. Applicant admits that he owes a creditor \$86 for a past due account. Applicant has indicated several times that he would resolve this debt, but has not yet done so. This debt has not been paid. (Government Exhibit 3; Transcript at 45, 67, 94.)

1.d. Applicant admits that he owes a creditor \$588 for a medical debt. The status of this debt will be discussed along with 1.e., below.

1.e. Applicant admits that he owes the same creditor in 1.d. \$276 for a second medical debt. Applicant states that he made a payment arrangement with this creditor to pay \$478 to resolve both debts, but has not yet made the payment. This debt remains unpaid. (Government Exhibit 7; Transcript at 45, 67-70; 94-95.)

1.f. Applicant admits that he owes a debt for a repossessed automobile in the amount of \$6,235. The original debt was for \$9,235. He made an initial payment of

\$3,000 and was to make payments of \$100 per month beginning in September 2009. He was given an opportunity to submit evidence showing that he was paying this debt. He did not submit any additional information. This debt is still due and owing. (Government Exhibit 7; Applicant Exhibit A; Transcript at 37-38, 45-46, 71-73.)

1.g. Applicant admits that he owes a debt to a creditor in the amount of \$862. He states that he has made a payment agreement with this creditor to begin payments starting November 2009. There is no information that Applicant has made payments on this debt. It is still due and owing. (Government Exhibit 3; Transcript at 47.)

1.h. Applicant denies that he owes a debt to a creditor in the amount of \$500. At the hearing, Applicant agreed that he owes this debt, but he indicated some confusion as to the collection agency currently owning the debt. He was given an opportunity to submit evidence showing that this debt was paid or otherwise resolved. He did not submit any additional information. Based on the available information, I find that Applicant has not paid this debt and has no current plans to pay this debt. (Government Exhibit 1 at question 28, Exhibit 2 at 28; Transcript at 47, 95.)

1.i. Applicant denies that he owes a debt to a creditor in the amount of \$275.16 for a bank debt. Applicant stated that he had to pay this debt in order to open his current bank account. He was given an opportunity to submit evidence showing that this debt was paid or otherwise resolved. He did not submit any additional information. Based on the available information, I find that Applicant has not paid this debt. (Government Exhibit 2 at 20; Transcript at 48, 96.)

1.j. Applicant denies that he owes a debt to a creditor in the amount of \$2,900 in restitution. As further described under Paragraph 2, below, Applicant was arrested and convicted for stealing \$4,500 from a bank where he was a teller. As part of his sentence, he was required to pay \$6,500 in restitution. Applicant has given conflicting statements as to when he paid this debt off. He was given an opportunity to submit evidence showing that this debt was paid or otherwise resolved. He did not submit any additional information. Based on the available information, I find that Applicant has not paid this debt. (Government Exhibit 2 at 25-26; Transcript at 49-50, 96-98.)

During his testimony, Applicant stated that he made poor financial choices when he was younger. His current financial situation is stable, and he has no new debts that are currently past due. He intends to resolve the remainder of his past due indebtedness. (Transcript at 52.) He also submitted evidence showing that he successfully paid off additional debts that were not alleged in the SOR. (Transcript at 39-44; Applicant Exhibits B, C and D.)

## **Paragraph 2 - Guideline J, Criminal Conduct**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in criminal conduct. Applicant admits both allegations under this paragraph, 2.a. and 2.b. Those admissions are hereby deemed findings of fact.

Applicant was employed as a bank teller from February to September 2006. In July 2006 Applicant stole \$4,500 from his teller drawer. He was eventually discovered by investigators for the bank, and terminated. Subsequently, he was arrested for Grand Theft. He was convicted and sentenced to three years probation and to make restitution in the amount of \$6,500. The probation was due to expire in March 2010. Applicant maintains that he has paid the restitution, but failed to provide documentation to support his statement. Applicant has expressed extreme remorse for his conduct and states that nothing like this will ever happen in the future. (Transcript at 31-35, 54-65.)

## **Mitigation**

Applicant submitted unsigned statements from a co-worker, a former roommate, and his fiancée. The co-worker states, "I believe [the Applicant] to be a trust worthy employee capable of handling and abiding SAR program requirements as not to jeopardize national security, or company policies." (Applicant Exhibit F at 4.) The statements from his former roommate and fiancée are also laudatory in speaking of his current good judgment and honesty. (Applicant Exhibit F at 5-6.)

## **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 adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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. In addition, the administrative judge may also rely on his or her own common sense, as well as his or her 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 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**

### **Paragraph 1 - 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. Applicant, by his own admission, has over \$14,000 in past due debts, all of which have been due and owing for several years. 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.” The Applicant’s financial difficulties are of a longstanding nature. The Applicant has paid off some debts that were not alleged in the SOR. However, he did not submit any evidence showing that any of the debts listed in the SOR have been paid, even the smallest one of \$86. The evidence is meager as to how he is going to pay his remaining past due debts. It is the Applicant’s burden to submit evidence showing that this mitigating condition applies to this case. He has not done so.

Applicant has not initiated a good-faith effort to pay off his creditors, or otherwise resolve the debts. However, there is no track record of his making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable, which makes it mitigating where “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Finally, given the fact that he is at least \$14,000 in debt, I cannot currently find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c). He has not mitigated the Government’s security concerns regarding his financial situation. Guideline F is found against the Applicant.

## **Paragraph 2 - 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 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.

Under the Criminal Conduct guideline, the following Disqualifying Conditions are applicable: AG ¶ 31(a) “a single serious crime or multiple lesser offenses;” AG ¶ 31(c) “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;” and AG ¶ 31(d) “individual is currently on parole or probation.”

After considering the evidence in the record, I find that two of the Mitigating Conditions under Criminal Conduct do apply to this case. AG ¶ 32(a), states it may be mitigating where, “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.” In addition, AG ¶ 32(d) states that it can be mitigating where, “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 has never denied that he engaged in extremely poor judgment when he stole money from his teller drawer in 2006. From all indications, this was a momentary

and deeply regretted failure of judgment, that occurred more than three years before the record closed. He is successfully employed, and has been very open with his employer and the Government about this incident. Under the particular circumstances of this case, he has mitigated the security concerns about his criminal conduct. Guideline J is found for 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):

(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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant is under financial strain, and has been for several years. His debt situation is not yet under control. Under AG ¶ 2(a)(3), the Applicant's conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)), and that there is a high 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 financial situation at this time. If he is able to pay down his debts, or otherwise resolve them, he may be eligible for a clearance in the future. He is not eligible now.

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 Paragraph 1 of the Government's Statement of Reasons. As stated above, Paragraph 2 is found for the Applicant.

**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 THE APPLICANT**

    Subparagraphs 1.a. through 1.j.:        **Against the Applicant**

Paragraph 2, Guideline J:                   **FOR THE APPLICANT**

    Subparagraphs 2.a. and 2.b.:           **For 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