



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

-----  
SSN: -----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)  
)

ISCR Case No. 09-00507

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro se*

April 27, 2010

**Decision**

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and transcript, Applicant's request for a security clearance is denied.

On September 17, 2008, Applicant submitted a Questionnaire for Sensitive Positions (SF 86) to obtain a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant two sets of interrogatories<sup>1</sup> to clarify or augment information about potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding<sup>2</sup> that it is clearly

<sup>1</sup> Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

<sup>2</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

consistent with the national interest to grant Applicant's request for access to classified information. On June 19, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed in the adjudicative guidelines (AG)<sup>3</sup> for criminal conduct (Guideline J), financial considerations (Guideline F), and personal conduct (Guideline E).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on December 18, 2009. Pursuant to a Notice of Hearing issued on December 30, 2009, I convened a hearing in this matter on January 20, 2010. The parties appeared as scheduled. The Government presented eight exhibits (Gx. 1 - 8), which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of hearing (Tr.) on January 28, 2010.

### **Findings of Fact**

Under Guideline J, the Government alleged that in December 1995, Applicant was arrested, charged, and convicted of shoplifting, for which he was placed on 12 months probation (SOR ¶ 1.a); that in July 1996, he was arrested, charged, and convicted of theft of U.S. government property, for which he spent one month in jail (SOR ¶ 1.b); that in July 2002, he was charged with (1) purchase, possession, manufacture, distribution, or sale of marijuana, a felony, (2) manufacture/sell/dispense/distribute marijuana, a felony, (3) purchase, possession, manufacture, distribution, or sale of cocaine, a felony, (4) possession of a firearm or knife during commission of or attempt to commit certain felonies, a felony, for which he was placed on five years probation (SOR ¶ 1.c); that in January 2004, he was arrested, charged, and convicted of driving under the influence of alcohol, for which he spent 24 hours in jail, was placed on 12 months probation, fined, and ordered to complete community service (SOR ¶ 1.d); that in April 2006 he was arrested and charged with violating his probation, for which he was jailed for 10 days (SOR ¶ 1.e); and that, in March 2007, he was again arrested and charged with violating the terms of his probation (SOR ¶ 1.f). Applicant admitted without explanation all of these allegations.

Under Guideline F, the Government alleged that Applicant owes approximately \$6,499 for 12 delinquent debts (SOR ¶¶ 2.a - 2.i). Applicant also admitted these allegations without explanation. The Government also cross-referenced the allegations in SOR ¶¶ 1 and 2 as a security concern under Guideline E (SOR ¶ 3.a). Applicant also admitted this allegation. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following findings of relevant fact.

Applicant is 32 years old and employed by a defense contractor as a computer operator and electronics technician. He has worked for his current employer since July 2008. In 1995, after he graduated from high school, Applicant attended a vocational training school. He has never been married, but he has an 11-year-old daughter. He is

---

<sup>3</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

required to pay \$256 each month to support this child. In September 2009, he resolved a \$2,500 child support arrearage. Applicant also pays another woman about \$50 a week to support a 10-year-old boy whom the mother claims is Applicant's son. Paternity has not yet been verified, but Applicant anticipates he will be responsible for this child. By the laws of the state where the child lives, the support payments will not be calculated retroactively to the child's date of birth, but will run from the date paternity is determined. (Gx. 1; Tr. 28 - 29, 42 - 43; 48 - 49)

Applicant was arrested, charged, or convicted of criminal offenses at least six times between 1995 and 2007. On December 26, 1995, Applicant was arrested at a U.S. Army post exchange store. He was accused by the Provost Marshal of shoplifting \$180 worth of video games. After he issued a written statement denying the charges, his exchange privileges were revoked, his Armed Forces dependent's identification card was confiscated, and he was released on his own recognizance. There is no information in the record that reflects a judicial disposition of this charge. (Tr. 30 - 31; Gx. 5)

On December 28, 1995, Applicant was again arrested for shoplifting. This time it was by civilian police at a mall where he stole a jacket. On April 12, 1996, he was found guilty of theft by shoplifting, a misdemeanor, and placed on probation for 12 months. (Tr. 31 - 32; Gx. 4)

In about February 2002, Applicant began selling drugs as his sole means of support. He sold small amounts of marijuana and cocaine, and some of his customers were soldiers from a nearby Army base. Applicant estimates he made about \$300 a day selling illegal drugs. On July 8, 2002, based on the results of investigations by both Army and civilian law enforcement, Applicant was arrested and charged with the drug and weapons offenses specified in SOR ¶ 1.c. Applicant was jailed pending trial. On November 15, 2002, he was sentenced to time served plus four months at a penal boot camp. He also was placed on supervised probation for five years. His probation ended on November 15, 2007. (Tr. 33 - 35; Gx. 1; Gx. 2; Gx. 4; Gx. 6)

On January 23, 2004, Applicant was arrested and charged with driving under the influence of alcohol (DUI). On May 10, 2004, he was convicted of that charge, jailed for 24 hours, assessed fines and court costs, ordered to complete 40 hours of community service, and placed on probation for 12 months. (Tr. 36 - 37; Gx. 1; Gx. 2; Gx. 4)

On April 26, 2006, Applicant was arrested and charged with violating the terms of his probation from his 2002 drug conviction. Applicant had not paid the costs associated with his probation. Despite subsequently making the required payment, he was jailed for 10 days because of his 2004 DUI conviction and a positive urinalysis. Applicant was also arrested and charged with probation violation in March 2007, because he again failed to pay required probation costs. He was not jailed because he subsequently made the required payment. (Tr. 37 - 39; Gx. 2; Gx. 4)

After Applicant was released from probation in 2007, he moved to another state to be near his daughter. When he left, he incurred unpaid telephone, cable, and utility bills totaling about \$2,000. He also left behind an unpaid rent obligation of \$2,600. Applicant disputes that he owes this debt or that the amount cited is accurate; however,

he has no documentation to support his claim. When Applicant returned to the state where he now lives, he incurred another debt (\$1,205) for unpaid rent after he broke his lease. Applicant testified that his stepfather is helping him resolve this debt, but did not say how. Credit reports also reflect that Applicant owes about \$685 for four unpaid medical bills. Applicant does not know what these are for but does not contest their validity. (Tr. 26 - 27, 44 - 48; Gx. 7; Gx. 8)

Applicant has not paid or otherwise resolved any of the debts attributed to him by the credit reports obtained during his background investigation. In December 2009, he started consulting with a certified public accountant (CPA) who advised him to start a savings account. That account will be used to negotiate with his creditors to settle his past-due debts. As of the hearing, Applicant had saved about \$75. He lives paycheck to paycheck, but he is meeting his current monthly obligations. Applicant does not work from a budget, but he pays his bills as soon as he gets them. (Tr. 40 - 42)

### **Policies**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>4</sup> for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>5</sup> and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG ¶ 15 (Guideline E - Personal Conduct), AG ¶ 18 (Guideline F - Financial Considerations), and AG ¶ 30 (Guideline J - Criminal Conduct).

---

<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup> Directive. 6.3.

The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>6</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Thus, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.<sup>7</sup>

## Analysis

### Criminal Conduct

Despite Applicant's admission to SOR ¶ 1.b, available information does not support that allegation. While Applicant admitted and discussed the December 1995 post exchange shoplifting arrest, he testified that he did not think he was charged with stealing government property at that time. The FBI Report submitted as Gx. 4 shows only that an individual with the same first and last name as Applicant, but with a different middle initial, was charged with theft of government property in the same state but in a different city than Applicant's residence at the time. Unlike information supporting the other Guideline J allegations, the information about this arrest lacked any corroborating details and it was not discussed in his subject interview with a government investigator during his background investigation. SOR ¶ 1.b is resolved for the Applicant.

As to SOR ¶¶ 1.a, 1.c - 1.f, the Government's information is sufficient to show that Applicant was arrested, charged or convicted of drug-related felonies, a DUI, two shoplifting offenses, and two probation violations between 1995 and 2007. He has been incarcerated for his offenses at least three times, and until late 2007 was subject to imprisonment if he violated the terms of his probation. All of the information presented, including Applicant's admissions, raises a security concern that is expressed at AG ¶ 30 as follows:

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.

Further, available information requires application of the disqualifying conditions at 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,*

---

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

*formally prosecuted or convicted); and AG ¶ 31(e) (violation of parole or probation, or failure to complete a court-mandated rehabilitation program).*

I have also considered the potential applicability of the mitigating conditions listed under AG ¶ 32. Applicant insists that he has changed and that he will not engage in criminal conduct in the future. However, he violated his probation at least three times. His last violation occurred less than eight months before his probation was scheduled to end in 2007. I conclude the record does not support application of any of the mitigating conditions listed at AG ¶ 32. Applicant's arrest record ran from age 18 until age 25, and his conduct has been supervised by the judicial system through age 30. Given the recency of his probation, and his inability to complete that probation without incident, I specifically conclude that the mitigating conditions at AG ¶ 32(a) (*so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) or AG ¶ 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*) do not apply. Applicant has not mitigated the security concerns about his criminal conduct.

## **Financial**

The security concern about Applicant's finances, as stated in AG ¶ 18, is that:

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 Government presented sufficient information to support the allegations in SOR ¶ 2.a - 2.i; that is, that Applicant owes about \$6,500 in delinquent personal debt accrued since late 2007. Applicant's financial problems are current because his debts alleged remain unpaid. Thus, the record requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

By contrast, Applicant's debts are due entirely to his decision to leave town after his probation ended in November 2007. He has not demonstrated that he will be able to pay or otherwise resolve his debts in the near future, and he is still living paycheck to paycheck. To his credit, he has started working with a CPA and has a plan of action. However, he has yet to establish a record of financial health that would indicate these issues will not recur. Applicant has not mitigated the security concerns raised by his unpaid debts.

## Personal Conduct

The Government also cross-referenced the allegations in SOR ¶¶ 1 and 2 as security concerns under Guideline E. As to his finances, failure to manage one's money or other personal affairs may also indicate a defect in overall judgment or reliability. (See AG ¶ 18) Further, Applicant has a long history of disregarding laws against drug involvement, drinking and driving, and theft. He also has shown he is willing to risk going to jail by ignoring court orders regarding his probation. Such conduct also calls his judgment into question. (See AG ¶ 30) All of the information presented, including Applicant's testimony, raises a security concern that is expressed at AG ¶ 15 as follows:

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.

However, none of the specific disqualifying conditions listed at AG ¶ 16 apply. The disqualifying conditions at AG ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) and AG ¶ 16b) (*deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*) do not apply. Applicant has been candid about his arrests and finances and there has been no showing that he made any false statements in his SF 86 or during the background investigation.

The disqualifying conditions at AG ¶ 16(e) (*personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group*) and AG 16(f) (*violation of a written or recorded commitment made by the individual to the employer as a condition of employment*) do not apply to these facts and circumstances. The disqualifying condition at AG ¶ 16(g) (*association with persons involved in criminal activity*) does not apply to Applicant's drug dealing endeavors because of the passage of time.

Finally, I have not applied the disqualifying conditions at AG ¶ 16(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) (emphasis added) or AG ¶ 16(d) (credible adverse information **that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination**, but which, when combined with all available information 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. This includes but is not limited to consideration of:(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;(2) disruptive, violent, or other inappropriate behavior in the workplace; (3) a pattern of dishonesty or rule violations;(4) evidence of significant misuse of Government or other employer's time or resources) (emphasis added).

The established facts about his criminal conduct and finances are sufficient to disqualify Applicant under Guidelines J and F, respectively. Because Applicant failed to mitigate the security concerns about those aspects of his background, he likewise failed to mitigate the overall concerns about his personal conduct articulated at AG ¶ 15.

### **Whole-Person Concept**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines E, F, and J. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is 32 years old and presumed to be a mature adult. He has taken minimal steps to resolve his finances and he has been steadily employed for almost two years. Applicant appears motivated to avoid future adverse conduct and to improve his finances. However, absent a reliable track record of conduct in both areas, which he has not established, available positive information is not yet sufficient to overcome the adverse inferences about his clearance suitability raised by the Government's information. A fair and commonsense assessment<sup>8</sup> of all available information bearing on Applicant's past conduct and current circumstances shows he has failed to address satisfactorily the government's doubts about his ability or willingness to protect the government's interests as his own. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.<sup>9</sup>

### **Formal Findings**

Formal findings 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:	AGAINST APPLICANT
Subparagraphs 1.a, 1.c - 1.f:	Against Applicant

---

<sup>8</sup> See footnote 7, *supra*.

<sup>9</sup> See footnote 9, *supra*.



Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a - 2.l:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to continue Applicant's access to classified information. Request for security clearance is denied.

---

MATTHEW E. MALONE  
Administrative Judge