



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



In the matter of: )  
)  
) ISCR Case No. 09-08088  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Bayard Glendon, Esq., Department Counsel  
For Applicant: *Pro se*

April 7, 2011

**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant mitigated the Drug Involvement security concerns, but has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 16, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations and Guideline H, Drug Involvement. DOHA acted under Executive Order (EO) 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 26, 2010. He requested a hearing before an administrative judge. The case was assigned to me on November 19, 2010. DOHA issued a notice of hearing on November 19, 2010, and the hearing was

convened as scheduled on December 1, 2010. The Government offered exhibits (GE) 1 through 8, which were admitted into evidence without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified and submitted exhibit (AE) A that was admitted into evidence at the hearing. The record was held open for Applicant to submit additional information. Applicant submitted AE B, which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 10, 2010.

### **Procedural Ruling**

Applicant was verbally notified by Department Counsel of the November 30, 2010, hearing date prior to the issuance of the written notice of hearing dated November 19, 2010. At hearing, I asked Applicant if he was ready to proceed and he stated that he was ready.<sup>1</sup> Applicant waived the 15-day notice requirement imposed by ¶ E3.1.8 of the Directive.

### **Findings of Fact**

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since July 2009. He has a master's degree. He is divorced and has two children. He currently pays \$1000 per month in child support.<sup>2</sup>

The SOR alleged six delinquent debts (one debt is a duplicate) and unauthorized use of prescription drugs. The debts were listed on credit reports obtained on August 18, 2010, August 12, 2009, September 19, 2008, and June 7, 2006. In his answer, Applicant admitted owing the debts and using the prescription drugs.<sup>3</sup>

Applicant attributes his financial difficulties to a series of events beginning in 2008. He and his wife were sued in a civil action over a real estate purchase option on their home. Although he and his wife won the lawsuit, they did not receive any monetary remedy and they paid out about \$80,000 in attorney's fees. They used their credit cards to finance this litigation. Ultimately, he could not continue to pay the mortgage on this property, and it was sold in a short-sale. Also in 2008, he lost his job and was unemployed for three months before finding work with a defense contractor. He also was unemployed more recently, before he was hired for his current job. Finally, he and his wife separated and he was required to pay support for his wife and children. The support started at about \$3,000 per month in March 2009, and then dropped down to about \$1000 per month because of the terms of a separation agreement in September 2009.<sup>4</sup>

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<sup>1</sup> Tr. at 13.

<sup>2</sup> Tr. at 5, 6, 31; GE 2.

<sup>3</sup> GE 3-7.

<sup>4</sup> Tr. at 26-33; GE 3.

Applicant hired a bankruptcy attorney, but did not pursue bankruptcy any further. He did participate in the mandatory bankruptcy counseling program in November 2009.<sup>5</sup>

The debt alleged in SOR ¶ 1.a is a judgment resulting from past-due rent in the amount of \$2,050. Applicant acknowledges this debt. He paid \$1,000 toward this judgment in November 2010. The balance remains unpaid and unresolved. He plans to pay \$200 to \$300 per month until it is paid.<sup>6</sup>

The debt alleged in SOR ¶ 1.b is a charged-off credit card debt in the amount of \$45,906. Applicant acknowledges this debt. It remains unpaid and unresolved.<sup>7</sup>

The debt alleged in SOR ¶ 1.c is a charged-off credit card debt in the amount of \$9,111. Applicant acknowledges this debt. It remains unpaid and unresolved.<sup>8</sup>

The debt alleged in SOR ¶ 1.d is charged-off credit card debt in the amount of \$18,567. It remains unpaid and unresolved.<sup>9</sup>

The debt alleged in SOR ¶ 1.e is a collection account on a credit card debt in the amount of \$13,452. Applicant acknowledges this debt. It remains unpaid and unresolved.<sup>10</sup>

The debt alleged in SOR ¶ 1.f is a duplicate of the debt in SOR ¶ 1.e. This debt is resolved.<sup>11</sup>

Applicant took his wife's prescription drugs on several occasions (Codeine-Tylenol, Ativan, and Klonopine), without medical authorization from May 2009 to June 2009. He took these drugs because he experienced severe shoulder pain from a bicycle accident and because he was experiencing stress and anxiety due to the loss of his job and his marital problems. He did not take any of these drugs after June 2009.<sup>12</sup>

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<sup>5</sup> Tr. at 33; AE A-B.

<sup>6</sup> Tr. at 42-43; GE 4-6; AE A.

<sup>7</sup> Tr. at 43; GE 4-6.

<sup>8</sup> Tr. at 43; GE 4-6.

<sup>9</sup> Tr. at 44; GE 4-6.

<sup>10</sup> Tr. at 44-45; GE 4-6.

<sup>11</sup> Tr. at 44-45; GE 4-6.

<sup>12</sup> Tr. at 41; GE 3.

Applicant presented letters from friends and business acquaintances that commented on his loyalty and honesty as a friend, his high values and morals, and his trustworthiness and dedication.<sup>13</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that are to be 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, administrative judges apply the guidelines 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

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<sup>13</sup> AE A.

applicant concerned.” See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to satisfy his obligations. The evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's debts are recent, numerous, and there is no indication that they will not recur. AG ¶ 20(a) is not applicable.

Applicant experienced some personal setbacks because of expenses related to his civil lawsuit, his divorce, and periods of unemployment. However, he failed to take any meaningful action to address his debts. While his lawsuit, his divorce, and his unemployment were conditions outside his control, he failed to act responsibly under the circumstances when he failed to address his debts. AG ¶ 20(b) is not applicable.

Applicant participated in the mandatory bankruptcy credit counseling. Other than paying \$1,000 towards satisfying the judgment against him, his debts are not resolved or under control. AG ¶¶ 20(c) and 20(d) are not applicable.

Applicant disputed the debt listed at SOR ¶ 1.f as a duplication of the debt listed in SOR ¶ 1.e. AG ¶ 20(e) is applicable to SOR ¶ 1.e.

At this point, Applicant's finances remain a concern with no apparent plan to resolve the debts at issue.

### **Guideline H, Drug Involvement**

AG ¶ 24 expresses the security concern pertaining to Drug Involvement:

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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25 and especially considered the following:

(a) any drug abuse.

Appellant used his wife's prescription drugs without medical authorization on several occasions. AG ¶ 25(a) applies.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26 and especially considered the following:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(c) abuse of prescription drugs was after a severe or prolonged illness during which drugs were prescribed and abuse has since ended.

Applicant was experiencing a stressful time in his life and was suffering from a physical injury during the time he abused his wife's prescription drugs. Those were circumstances that are unlikely to recur. AG ¶ 26(a) applies. Since the drugs were not prescribed to the Applicant, AG ¶ 26(b) does not apply.

### **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 relevant circumstances. 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.

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered the lawsuit, divorce, and periods of unemployment that contributed to Applicant's financial problems. I considered his favorable character evidence. I also considered the circumstances that led to his abusing his wife's prescription drugs. On the other hand, Applicant failed to establish any type of financial plan to address his debts. Additionally, he has not shown a track record of financial stability. His use of prescription drugs was circumstance-specific. He convinced me that he will not use un-prescribed drugs in the future.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Drug Involvement security concerns but he has not mitigated the Financial Considerations security concerns.

### **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
Subparagraphs 1.a – 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For 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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Robert E. Coacher  
Administrative Judge