



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 09-08442  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: Tom Albin, Esq

04/04/2012

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Criminal Conduct and Financial Considerations concerns. He was recently involved in a motor vehicle accident while under the influence of alcohol and narcotic medication. He left the scene and, after being stopped by police, cocaine was discovered in his car. He was also recently involved in a domestic incident, where he violently assaulted his wife. He only recently completed probation for the domestic violence offense. He failed to establish that his past criminal behavior is no longer a concern. Applicant accumulated over \$29,000 in bad debt that he has continuously promised to resolve, but failed to start paying until recently. He failed to establish that his financial situation is under control. Clearance is denied.

**Statement of the Case**

On August 15, 2011, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR), setting out security concerns under Guideline

J (Criminal Conduct) and Guideline F (Financial Considerations).<sup>1</sup> On September 15, 2011, DOHA received Applicant's Answer to the SOR.<sup>2</sup>

On November 1, 2011, Department Counsel indicated the Government was ready to proceed with a hearing in the case. After coordinating with the parties, I scheduled the hearing via video teleconference for December 5, 2011.<sup>3</sup>

At hearing, Department Counsel offered Government Exhibits (GE) 1 through 11, which were admitted into evidence without objection. Department Counsel also submitted a chart of the debts at issue as a demonstrative aide. Applicant appeared at hearing with counsel, testified, and offered Applicant's Exhibits (AE) A through J. These exhibits were admitted without objection. I granted Applicant's request to keep the record open to provide him additional time to submit matters for my consideration. He timely submitted six additional documents relating to his past-due debts and completion of probation. These documents were marked as AE K through P, and admitted without objection. Applicant also submitted his performance reviews from 2009 to 2011, which were collectively marked and admitted as AE Q. The transcript (Tr.) was received on December 14, 2011.

### **Findings of Fact**

Applicant is 56 years old. He is a welder by training and was originally hired by his current employer in 1980. He was laid off in 1995, but was rehired by his employer in 2002. He was then promoted to his current position of foreman. He was first granted a security clearance in 1980. He is a good worker, and is described by his union representative as an "honest, responsible, and trustworthy person."<sup>4</sup>

Applicant is legally separated from his wife, who he married in 1975. They have three adult children. His middle child is handicapped. He financially supports his family.<sup>5</sup>

Applicant's legal and financial problems started in about 2006 when he was diagnosed with Hepatitis C. He got depressed, and started abusing alcohol and his

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<sup>1</sup> DOHA took this action 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) implemented by the Department of Defense on September 1, 2006.

<sup>2</sup> The Answer does not indicate whether Applicant requested a hearing.

<sup>3</sup> The hearing was originally scheduled for December 6, 2011, but was rescheduled at Applicant's request. As a time management tool, I issued a prehearing order requiring the parties to serve one another and me their anticipated exhibits prior to the hearing. (Hearing Exhibit I) The parties complied.

<sup>4</sup> Tr. at 18-27; GE 1; GE 2; AE P; AE Q.

<sup>5</sup> Tr. at 27-30, 58-59,74-77, 101, 125-126; GE 1.

prescription medication. Applicant moved out of his house and began dating his current girlfriend, who also used to drink heavily and has mental health issues. Applicant's drinking, coupled with his abuse of narcotic medication, contributed to his commission of several criminal offenses, including a violent attack on his wife for which he recently completed probation. Applicant also disregarded his financial obligations and amassed over \$29,000 in bad debt, which he only recently started to tackle.

### Criminal History

In December 2006, Applicant was living with his current girlfriend and they had an alcohol-induced argument. Applicant asked her to leave and, when she did not, he physically removed her from the house. The police were called and Applicant's girlfriend claimed that Applicant had assaulted her. Applicant and his girlfriend were arrested. Applicant's girlfriend later recanted her claim and a restraining order was issued against her. Applicant was told the charge against him for domestic violence would be dropped if he remained on good behavior for three months. The charge was eventually dropped and Applicant petitioned the court to have the restraining order against his girlfriend lifted. After this incident, Applicant reconciled with his wife and moved back into their home.<sup>6</sup> (SOR ¶ 1.b)

In December 2008, Applicant was out of work due to a work-related injury. He was taking percocet and vicodin while drinking alcohol.<sup>7</sup> After stopping to pick up beer at a store, Applicant hit another car. He left the scene and was later stopped by police. He lied to the police when he claimed he had not used percocet prior to the accident. The police searched his car, and uncovered a weapon and "two rocks of cocaine."<sup>8</sup> Applicant was charged with leaving the scene of an accident, illegal weapons possession, and illegal drug possession. He denies the cocaine found in his car was his. He had not driven the car in about two months and his son had been using it. At hearing, Applicant testified that he did not confront his son about the illegal drugs found in his car, because he did not believe the drugs belonged to his son. Applicant decided not to contest the charges in court to avoid the possibility of conviction. He entered an accelerated rehabilitation program and was placed on probation. Applicant maintains that the other car suffered no damage and the other driver is exaggerating his injuries. I find that Applicant committed the charged criminal offenses.<sup>9</sup> (SOR ¶ 1.a)

Applicant submitted his current security clearance application (SCA) in April 2009. He disclosed the above criminal matters and then discussed them with a government investigator in August 2009. He also discussed his history of alcohol use.

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<sup>6</sup> Tr. at 30-32, 35-40, 89, 112-115; GE 1 at 38; GE 3, 8/26/09 Subject Interview (SI) at 2-3; AE A.

<sup>7</sup> Tr. at 31.

<sup>8</sup> GE 3, 8/26/09 SI at 1-3.

<sup>9</sup> Tr. at 31-35, 85-87, 90, 110-112; GE 1 at 37-38; GE 3, 8/26/09 SI at 1-2; GE 8.

He started drinking in his teens and drank responsibly until his 40's, when he started binge drinking. He claimed to have not used alcohol since December 2008.<sup>10</sup>

In December 2009, Applicant was again arrested for domestic violence. He had been drinking alcohol and had taken percocet earlier in the day. He got into an argument with his wife and physically assaulted her. Applicant's wife had to be hospitalized for her injuries. Applicant was arrested and charged with strangulation and disorderly conduct. He was placed on probation and a restraining order was issued against him. He completed the terms of his probation in June 2011. The restraining order is still in effect.<sup>11</sup> (SOR ¶ 1.c)

Applicant's domestic violence arrest in December 2009 resulted in court-mandated anger management and alcohol and drug treatment. He completed the court-mandated anger management program in October 2010. On his own initiative, he sought out and has been in treatment with a private psychologist to resolve his long term anger issues. He testified that the last time he drank alcohol was in December 2009. He has been consistently going to Alcoholics Anonymous (AA) since the December 2009 incident, but had not gone in the two weeks leading up to the hearing because he was a "nervous wreck."<sup>12</sup>

Applicant has been legally separated from his wife since the December 2009 domestic violence incident. His relationship with his wife and his family has improved over the past year. His girlfriend lives with him on occasion. Applicant and his girlfriend no longer drink alcohol, and he does not allow any alcohol in his home. They both realize that their use of alcohol was a problem and attend AA meetings together. Applicant refuses to take any narcotic medication and will only take over-the-counter aspirin for his work-related medical issues.<sup>13</sup>

### Financial History

After being diagnosed with Hepatitis C, Applicant started spending his money on alcohol and, to a lesser extent, on gambling. He stopped paying his bills.<sup>14</sup> He disclosed his delinquent debts on his April 2009 SCA, including a delinquent credit card debt totaling \$7,686. He claimed in his SCA to be paying this credit card debt. In August 2009, Applicant told a government investigator that he had been paying \$50 a month towards the debt for a year.<sup>15</sup> In November 2010, DOHA asked Applicant about this

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<sup>10</sup> GE 1; GE 3, 8/26/09 SI at 1-4.

<sup>11</sup> Tr. at 40-47, 51-52, 73, 89-90, 103-104, 115-122; GE 8; AE M.

<sup>12</sup> Tr. at 42, 48-51, 104-105, 109-110, 126-128, AE B – D.

<sup>13</sup> Tr. at 39-40, 77, 112-115, 126-128, 135.

<sup>14</sup> 8/26/09 SI at 3-5.

<sup>15</sup> GE 1 at 43-53; 8/26/09 SI at 5.

delinquent credit card debt. He promised to start paying \$200 per month towards the debt starting in February 2011.<sup>16</sup> He made a single payment of \$50 towards this debt on the day of the hearing.<sup>17</sup> He did not submit proof of any other payments towards this debt. (SOR 2.a)

Applicant also disclosed on his April 2009 SCA that he had a car repossessed. The creditor secured a judgment for over \$21,000 in February 2011. Applicant was required to start paying \$35 per week starting in March 2011. He did not make the required payments and claims that he did not receive the court paperwork. In his interrogatory response to DOHA from November 2010, Applicant stated that he would satisfy this judgment once he received an anticipated money award for injuries he had sustained on the job. After the hearing, Applicant agreed to start paying \$100 every two weeks to satisfy the judgment and submitted proof of one payment.<sup>18</sup> (SOR ¶¶ 2.d and 2.e)

Although he made no payments towards the delinquent credit card debt and judgment until recently, Applicant did purchase a high-end motorcycle in March 2011. He returned the motorcycle to the lender after several months, because he could no longer afford the monthly payments. The motorcycle was sold by the lender for more than Applicant owed and he is no longer liable on this account.<sup>19</sup> (SOR ¶ 2.f)

Applicant did satisfy a \$270 debt shortly before the hearing.<sup>20</sup> (SOR ¶ 2.f) He has not satisfied the two minor debts for \$881 and \$98, which he previously promised to pay.<sup>21</sup> (SOR ¶¶ 2.b and 2.c) Applicant also owes back taxes from 2007. He has been paying per an agreement with the IRS.<sup>22</sup> His most recent credit report notes additional delinquent debts that he claims to have paid.<sup>23</sup>

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<sup>16</sup> GE 4.

<sup>17</sup> Tr. at 52-58; AE E; AE I; AE O.

<sup>18</sup> Tr. at 63-65,98-101; GE1; GE 4; AE K; AE I; AE N.

<sup>19</sup> Tr. at 68-71, 94-96, 105; AE F.

<sup>20</sup> Tr. at 65-68; AE J.

<sup>21</sup> Tr. at 60-63; GE1; 8/26/09 SI at 5-6 (tells agent will pay telephone bill for \$881 once gets itemized bill); GE 4 (17 months later, promises DOHA will start paying \$881 bill with first payment due November 19, 2010 and will pay the \$98 bill in December 2010).

<sup>22</sup> Tr. at 102-103 (testifies owes about \$7,000 in back taxes for early withdrawal penalty from 401K account to pay son's college expenses); 8/26/09 SI at 6 (tells agent that he is paying the IRS \$200 per month for \$2,800 in back taxes due to early withdrawal penalty and that he used money to pay wife's credit cards); AE G. See also Tr. at 129.

<sup>23</sup> Tr. at 105; GE 11.

Applicant's income for 2011 was over \$100,000. He works overtime whenever possible to make extra money to support his family and pay his bills. His wife used to manage the family's finances and he is now figuring out how to manage his money. He has not taken a financial counseling course.<sup>24</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, which 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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, 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." Directive ¶ E3.1.15.<sup>25</sup> An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b).

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. "A clearance adjudication is an applicant's opportunity to demonstrate that, prior to being awarded a clearance, he (or she) actually possesses the judgment, reliability, and trustworthiness essential to a fiduciary relationship with this country."<sup>26</sup>

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<sup>24</sup> Tr. at 71-74; AE G. *But see* GE 4 (personal financial statement from November 2010 reflects negative monthly remainder of nearly \$480 and bank savings of just \$25).

<sup>25</sup> ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011) ("Once an applicant's SOR admissions and/or the Government's evidence raise a security concern, the burden of persuasion shifts to the applicant to mitigate the concern.").

<sup>26</sup> ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

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 of potential, rather than actual, risk of compromise of classified information.

## Analysis

### Guideline J, Criminal Conduct

The criminal conduct concern is addressed 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.

Applicant's December 2008 arrest for leaving the scene of an accident and December 2009 domestic violence incident implicates the above concern.<sup>27</sup> These offenses also establish the following disqualifying conditions under AG ¶ 31:

- (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.<sup>28</sup>

An applicant may mitigate the criminal conduct concern by establishing one or more of the mitigating conditions listed under AG ¶ 32. I have considered all the mitigating conditions and only the following were potentially raised by the evidence:

- (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; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or

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<sup>27</sup> See ISCR Case No. 11-03025 (App. Bd. Jan. 6, 2012) (Appeal Board upholds judge's finding that applicant committed domestic violence incident despite the lack of a conviction).

<sup>28</sup> I do not find that Applicant's December 2006 arrest for domestic violence implicates the Guideline J concern or any of the disqualifying conditions under AG ¶ 31, because the evidence supports a finding that Applicant did not commit the charged offense. However, Applicant's judgment to remain in a relationship with the individual who falsely accused him of a violent crime, had a restraining order issued against her after the 2006 incident, and has her own issues with alcohol, undercuts Applicant's favorable evidence. See *generally* ISCR Case No. 10-00922 at 3 (App. Bd. Nov. 3, 2011).

restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's criminal conduct was tied to his substance abuse and anger-management issues. He has sought treatment for these underlying issues. He recently completed his probation for his violent assault on his wife. However, the assault did not occur under unusual circumstances and a restraining order remains in place as a result of this criminal conduct. Further, Applicant continues to deny culpability and does not truly appreciate the significant danger that he created when he decided to drive after abusing alcohol and his prescription medication. His actions resulted in an accident that he refuses to acknowledge caused serious injury to the other driver and damage to his vehicle. He also refuses to admit that the cocaine seized in his car was his. Under the circumstances, the passage of time and Applicant's recent completion of probation do not mitigate the security concern raised by his criminal conduct. AG ¶ 32(a) and (d) do not apply. Applicant failed to mitigate the criminal conduct concern.

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

The security concern relating to financial problems is articulated at 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.

One aspect of the concern is that an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant's accumulation of a significant amount of delinquent debt over a lengthy period of time, which was in part due to his alcohol abuse, directly implicates this concern. It also establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.

An applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. The relevant mitigating conditions are:



(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 decided not to pay his bills after finding out about his medical condition. He started spending his money on alcohol and, to a lesser extent, on gambling. His feeling of despair at finding out about his medical condition is understandable, but his decision not to pay his financial obligations is not. He has promised to resolve his delinquent debts throughout the security clearance process and failed to follow through until recently. He still has not paid an old bill for less than \$100 that he has been on notice of since at least November 2010. He currently has over \$29,000 in bad debt. The majority of this debt is for a \$21,000 judgment that was secured by his creditor in February 2011. He did not pay the \$35 monthly payment required by the terms of the judgment and, instead, purchased a high-end motorcycle. Applicant did pay other debts and financially supports his family. However, Applicant's effort to put his financial house in order is far too recent to mitigate the security concerns raised by his finances. None of the mitigating conditions apply. Applicant's finances remain a security concern.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>29</sup> I gave due consideration to Applicant's possession of a security clearance for over 25 years without incident and the potential ramification this

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<sup>29</sup> (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.

decision may have on his family.<sup>30</sup> However, the protection of national security is the paramount concern in assessing an applicant's security suitability. Further, security clearance adjudications are "not an exact science, but rather predictive judgments" where an applicant's past history is the best indicator of future conduct.<sup>31</sup> Applicant's past history of criminal activity and financial irresponsibility leaves me with serious doubts that his recent positive changes are permanent. Accordingly, I find that the favorable whole-person factors present in this case do not outweigh the security concerns at issue. Overall, the record evidence leaves me with questions and doubts about Applicant's continued eligibility and suitability for a security clearance.

### Formal Findings

I make the following formal findings regarding the SOR allegations:

Paragraph 1, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b and 1.c:	Against Applicant
Paragraph 2, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 2.a – 2.e:	Against Applicant
Subparagraphs 2.f and 2.g:	For Applicant

### Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge

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<sup>30</sup> See generally ISCR Case No. 11-02087 at 3 (App. Bd. Mar. 20, 2012) (“[e]ven years of safeguarding national security information may not be sufficient to mitigate a history of ongoing, significant delinquent debt.”).

<sup>31</sup> ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) [citing to *Department of the Navy v. Egan*, 484 U.S. 518, 528-529 (1988)].