



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



In the matter of:	)	
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	)	ISCR Case No. 10-01355
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Carolyn H. Jeffreys, Esquire, Department Counsel  
For Applicant: Stephanie N. Mendez, Esquire

May 23, 2011

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**Decision**

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CURRY, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns, but failed to mitigate the drug involvement security concern. Clearance is denied.

**Statement of the Case**

On July 19, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, and Guideline H, Drug Involvement. 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 adjudicative guidelines (AG).

Applicant answered the SOR on August 13, 2010, admitting all of the allegations except subparagraphs 1.a, 1.b, 1.e, and 1.f. He requested a hearing, and the case was assigned to me on November 5, 2010. On December 1, 2010, a notice of hearing was issued scheduling the case for December 14, 2010. The hearing was conducted as

scheduled. I received six Government exhibits, marked as Government Exhibits (GE) 1 through 6, and 14 Applicant exhibits, marked as Applicant's Exhibits (AE) 1 through 14. Also, Applicant and his supervisor testified. DOHA received the transcript on December 27, 2010.

### **Findings of Fact**

Applicant is a 36-year-old man with three children ages 14, 13, and nine. He was married from 1995 to his divorce in 2002. (GE 1 at 28) His ex-wife has physical custody of the children. (Tr. 86)

Applicant dropped out of high school. Later, in 1999, he earned a GED. In 2004, Applicant attended college, and completed an associate's degree in natural sciences in 2009. (Tr. 86) Currently, he works in a molecular research lab as an optical microscopist. (Tr. 46) His job duties include "us[ing] bright field light to look at particles." (Tr. 46) Applicant is highly respected at his job. According to his manager, he is a thorough, thoughtful worker. (Tr. 20)

The SOR alleges approximately \$58,000 of delinquent debt. Approximately \$39,500 constitutes a child support delinquency (SOR ¶ 1.d), \$1,500 constitutes an income tax delinquency (1.g), and approximately \$1,500 is owed to a credit card company (SOR ¶ 1.c) Applicant disputes approximately \$16,000. (SOR ¶¶ 1.a, 1.b, 1.e, and 1.f)

Applicant satisfied SOR ¶ 1.c (AE I), and notified all of the credit reporting agencies of the disputed debts. (Tr. 28; AE E at 1) The credit reporting agencies sustained his dispute of SOR subparagraphs 1.b and 1.f, totalling approximately \$13,400, and removed them from his credit report. (AE E at 1) Applicant's dispute of SOR ¶ 1.a, in the amount of \$1,826, was pending as of April 2010. (*Id.*) The credit reporting company rejected Applicant's dispute of SOR ¶ 1.e, an alleged delinquent medical bill in the amount of \$773. Applicant then satisfied it. (AE O)

Applicant accrued the child support delinquency between 2004 and 2009 when, as a college student, he was only working part-time. During this period, he was required to pay \$500 monthly, but only paid \$300 monthly. (Tr. 34) There is no evidence as to whether Applicant sought to modify the child support order when he was in college. Since October 2009, he has been satisfying this delinquency through a wage garnishment. (AE J) Each month, the court garnishes approximately \$500 from his pay and applies \$120 to the delinquency. (*Id.*)

Applicant accrued the federal income tax delinquency in 2003. (Tr. 40) It accrued because Applicant claimed his children as deductions on his income tax return, when, unbeknownst to him, his ex-wife had already claimed them. (Tr. 40) Since July 2010, he has been satisfying this delinquency through \$150 monthly payments. (AE K)

Applicant maintains a budget. (Tr. 68-69) He has approximately \$230 of monthly after-expense income and \$4,000 in his 401k plan. (Tr. 69)

From 1987 to approximately 1993, Applicant smoked marijuana approximately once every other week. (Tr. 41) In February 1987, when Applicant was 12 years old, he was arrested and charged with possession of marijuana. (Answer at 3) He was released on his own recognizance. In February 1993, Applicant was charged with possession of marijuana. (Tr. 52) In October 1993, Applicant was arrested and charged with planting/cultivating marijuana, and possession of a controlled substance after police confiscated marijuana plants from his home. (Answer at 3; Tr. 52) Both of these charges were dismissed. (Tr. 42)

Applicant stopped smoking marijuana after the October 1993 arrest. He had "grown tired," of smoking marijuana and was concerned about "some bad people that had started coming around [his] sister." (Tr. 54)

Applicant abstained from using marijuana for 14 years. He used it again in November 2007 after a reunion celebration with his brother, who had been estranged from the family for several years. (Tr. 56) Applicant decided to share a marijuana cigarette with his brother "as more or less of a peace offering." (Tr. 57) Applicant was only vaguely concerned that marijuana use was illegal. (Tr. 57)

In November 2008, Applicant, on two occasions, ate brownies that contained marijuana. (Tr. 57) He did so after his sister prepared them for Thanksgiving dinner and dared him to eat them. Applicant has not used marijuana since last eating the marijuana-laced brownies.

Applicant suffers from gout, a chronic disease similar to arthritis, with pain symptoms localized around the toes. (Tr. 43) Applicant has taken prescription medicine for gout since 2005. (Tr. 44) In the spring of 2008, Applicant's gout symptoms worsened, prompting him to see his physician and request stronger medication. The physician opted not to prescribe any stronger medicine, and instead, kept Applicant on the prescription medicine that he had already been taking. (Tr. 44) Applicant then took a prescription painkiller prescribed to his grandmother. (Answer at 3) He did this for about a week. (Tr. 45) Later, Applicant went to a follow-up appointment with his physician. When the physician realized how much pain Applicant was experiencing, he prescribed him stronger medication. (Tr. 45) Since then, Applicant's gout has been effectively managed, and he has not taken any prescription pain relievers other than what his doctor has prescribed. (Answer at 3)

## **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."

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.

## **Analysis**

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

Under this guideline, "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 (AG ¶ 18). Applicant's history of financial problems triggers the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 most significant delinquency, his child support indebtedness, was caused in part by his inability to pay the monthly child support payments in their entirety during the period when he was enrolled in college and underemployed. His tax delinquency also was indirectly related to his divorce. These facts are not sufficient to trigger AG ¶ 20(b). Applicant presented no evidence that he sought to modify the child support order during the years when he could not afford the monthly payments, and his tax delinquency was small in comparison to the remainder of his delinquencies.

Nevertheless, Applicant has been satisfying the child support delinquency through a wage garnishment since October 2009, and has been paying the income tax delinquency through \$150 monthly increments since July 2010. Also, he has either satisfied or successfully disputed all but one of the remaining SOR debts. Its resolution is pending the completion of an investigation by the credit reporting agency.

Applicant has ample after-expense income to pay his bills and has \$4,000 invested in his 401k plan. AG ¶ 20(c) through 20(e) apply. He has mitigated the financial considerations security concern.

## **Drug Involvement**

Under this guideline, "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" (AG ¶ 24). Applicant's history of illegal drug and prescription drug abuse triggers the application of AG ¶¶ 25(a), "any drug abuse," and 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia."

Applicant's use of pain medication that was not prescribed to him occurred during a one-week period three years ago when he was in excruciating pain. Since his physician altered his prescription medications, his pain has been successfully controlled. AG ¶ 26(c), "abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended," applies. Applicant has mitigated SOR subparagraph 2.e.

Applicant has not used marijuana regularly in more than 15 years. However, he used it again three times in 2008. His explanation that he smoked a marijuana cigarette with his brother to celebrate the end of a lengthy estrangement does not mitigate the negative security implications of the recurrence. Instead it compounds them because it

demonstrates that although Applicant may not be a regular user of marijuana, he views it as an indulgence to be enjoyed on special occasions.

Also, I was troubled by the fact Applicant ate marijuana-laced brownies as part of Thanksgiving dinner with his family. This calls into question Applicant's surrounding environment and minimizes the probative value of his reassurances that his marijuana use will not recur. Applicant has not mitigated the drug involvement security concern.

### **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):

- (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.

As a former high school dropout who is now a molecular researcher, Applicant has demonstrated tremendous personal development over the years. Though significant, it is insufficient to overcome the security concern generated by Applicant's drug usage. Evaluating this case in the context of the whole-person concept, I conclude Applicant failed to mitigate the drug involvement security concern.

### **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:	FOR APPLICANT
Subparagraphs 1.a - 1.g:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a - 2.d:	Against Applicant
Subparagraph 2.e:	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.

MARC E. CURRY  
Administrative Judge