



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 10-10296  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: *Pro se*

August 13, 2012

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on May 28, 2010. (Government Exhibit 3.) On February 8, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations), E (Personal Conduct) and J (Criminal Conduct) concerning Applicant. 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 3, 2012, and requested a hearing before an administrative judge. (Answer.) Department Counsel was prepared to proceed on April 30, 2012. This case was assigned to me on May 8, 2012. DOHA issued a notice of hearing on May 10, 2012. I convened the hearing as scheduled on June 8, 2012. The Government offered Government Exhibits 1 through 10, which were received without objection. Applicant testified on his own behalf, and submitted

Applicant Exhibits A through E, which were also admitted without objection. Applicant asked that the record remain open until June 22, 2012, for the receipt of additional documents. No additional documents were received. DOHA received the transcript of the hearing on June 20, 2012. The record closed on June 22, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 55 and divorced. 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 in this paragraph 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 admitted all the allegations in the SOR under this Paragraph. Those admissions are findings of fact. He also submitted additional information to support his request for a security clearance.

The SOR alleges, Applicant admits, and credit reports of the Applicant confirm that he owes approximately \$78,044 for 19 delinquent debts. Except for the debt in allegation 1.m, the debts are for medical care received by Applicant when he was unemployed. (Government Exhibits 5, 6, 7, 8 and 10.) The current status of these debts is as follows:

1.a, 1.b, 1.c, 1.d, 1.e, and 1.f. Applicant admits that he is indebted to a hospital for these six debts, which were for medical care. The total amount owed by Applicant for these debts was approximately \$58,813. In November 2011 Applicant reached a payment arrangement with the creditor and has been paying \$250 a month since then, for a total of \$1,272.75 as of May 14, 2012. Due to additional interest being debited to the account by the collection agency the total due increased to \$59,459 as of May 2012. (Government Exhibit 7; Applicant Exhibit C; Tr. 64-72.) These debts are being resolved.

1.g. Applicant admits that he is indebted to a second hospital in the amount of \$1,467. Applicant stated in his Answer, "I contacted their collections department in November 2011, they offered a discount and I agreed to settle this debt before June 2012 in the amount of \$1,105." Applicant testified that he had not paid this debt in accordance with this agreement. (Tr. 72-74.) This debt is not resolved.

1.h, 1.i, and 1.j. Applicant admits that he is indebted to the same collection agency for these three medical-related debts in a total past-due amount of at least \$3,688. Applicant stated in his Answer, "I have contacted their office to work with a collections representative, in an effort to agree on a payoff balance and payment program beginning this year." In his testimony at the hearing he stated, "I have not paid anything to [the collection agent]." (Tr. at 74-75.) These debts are not resolved.

1.k. Applicant admitted that he is indebted to a creditor for medical care in the past-due amount of \$397. Applicant originally stated he would not pay this debt because he felt the doctor concerned had misdiagnosed Applicant, which caused him to incur more debt. (Government Exhibit 7 at 5.) However, he testified at the hearing, "I plan on paying off this debt. I haven't yet. I said I was going to do it in March of this year [2012]. I haven't yet." (Tr. 75-76.) This debt is not resolved.

1.l. Applicant admitted that he is indebted to a creditor for medical care in the past-due amount of \$698. Applicant has not paid this debt as of the date of the hearing. (Tr. 76.) This debt is not resolved.

1.m. Applicant admitted that he is indebted to a credit union for a personal loan that has been charged off in the amount of \$5,857. Even though this debt has been charged off, Applicant began making monthly payments of \$205 in November 2011. According to Applicant, as of May 2012 this debt had been reduced to approximately \$4,426. (Government Exhibit 7 at 7; Applicant Exhibit B; Tr. 27-29, 76-79.) This debt is being resolved.

1.n. Applicant admits that he is indebted to a creditor for medical care in the past-due amount of \$46. As of the date of the hearing this debt had not been paid. (Tr. 79.) This debt is not resolved.

1.o. 1.p, and 1.q. Applicant admits that he is indebted to the same collection agency for these three medical related debts in a total past-due amount of at least \$640. As of the date of the hearing this debt had not been paid. (Tr. 79-80.) These debts are not resolved.

1.r. Applicant admits that he is indebted to a creditor for medical care in the past-due amount of \$6,955. Beginning in November 2011 Applicant reached a payment arrangement with the creditor and has been paying \$150 a month since then. As of May 7, 2012, the past-due amount had been reduced to \$6,310. (Applicant Exhibit D; Tr. 80-82.) This debt is being resolved.

Applicant testified that he is "tapped out" after paying \$555 per month toward his arrearages as discussed above. He further testified that he has \$100 to \$200 left after expenses each month. He plans to continue paying his past-due debts as he has the funds. His financial status is stable, according to Applicant. (Tr. 82-85.)

## **Paragraph 2 (Guideline E, Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he falsified material facts during the clearance screening process, and that he engaged in drug related criminal conduct in 2007 and 2008. Applicant admitted the four allegations under this paragraph. Those admissions are findings of fact.

2.a. Applicant was arrested on September 28, 2007, for various charges including 1) Driving Under the Influence (DUI), 2) Improper passing on the left, 3) Fail to maintain travel lane, 4) Possession of Firearm under the Influence, and 5) Possession of Drug Paraphernalia. He pled guilty to count 1 and the other charges were dismissed. He received a fine, was required to attend DUI school and a Victim Impact Panel, and was given credit for time served. He completed the court's requirements on or before September 30, 2008. Applicant testified that a woman he was seeing at the time left the drug paraphernalia in his vehicle without his permission. (Government Exhibits 1 and 2; Tr. 42-45, 50-53.)

2.b. Applicant was arrested on October 31, 2008, and charged with 1) Possession of a Controlled Substance, and 2) Possession of Controlled Substance Paraphernalia. Applicant pled guilty to both charges in approximately April 2009 and was put on a diversion program. He eventually completed the diversion program, after a bench warrant was issued and then recalled, and the charges were dismissed on January 5, 2011. (Government Exhibit 7 at 5, Exhibit 8 at 4; Applicant Exhibit E; Tr. 55-56.)

According to Applicant, this arrest occurred because of a domestic dispute he had with his then girlfriend, who has since passed away in June 2009.<sup>1</sup> The police were called because of an altercation, during which Applicant was injured. As his girlfriend was being arrested, she claimed that Applicant was a drug abuser and that there was drug paraphernalia in the house where they both lived. Drug paraphernalia was found, but Applicant claims it actually belonged to his girlfriend's ex-husband. Applicant has a serious heart condition and states he would not and did not use illegal drugs. He also states that, on advice of the police, he agreed to take responsibility for the drug paraphernalia, though he now views that decision as a mistake. (Tr. 45-50, 53.)

2.c Applicant's e-QIP is dated May 28, 2010. The e-QIP at Section 22.e. asks Applicant, "Have you EVER been charged with any offense(s) related to alcohol or drugs." (Emphasis in original.) (Government Exhibit 3.) He answered, "Yes," and listed the September 2007 arrest set forth under subparagraph 2.a., above. This was a false answer to a relevant question about his criminal history, since Applicant did not set out his October 2008 arrest for Possession of a Controlled Substance, as set forth under subparagraph 2.b., above.

2.d. The same e-QIP at Section 22.d. asks Applicant, "In the last 7 years, have you received counseling or treatment or have you been ordered, advised, or asked to seek counseling or treatment as a result of your use of drugs? If you answered "Yes," provide date(s) of treatment and name(s) and address(es) of provider(s)." He answered, "No." This was a false answer to a relevant question about Applicant's drug history, since he had been ordered to complete a drug diversion program in 2009 and, at the time the questionnaire was completed, he had not finished the program.

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<sup>1</sup>This is not the same person discussed in subparagraph 2.a.,

Applicant admits purposely omitting the information about his 2008 arrest and the diversion program. He stated, "I left it out because in my mind, it was going to be dismissed because I was already in [the diversion program]. . . . That was a big mistake on my part, but I was trying to hurry, and I was excited about working again, and it was ignorance and negligence. But there is nothing I was trying to do as far as mislead or cover anything up." (Tr. 57-58.) (See *a/so* Tr. 86-88.)

### **Paragraph 3 (Guideline J - Criminal Conduct)**

Government alleges under this paragraph that Applicant's conduct set forth under subparagraphs 2.a and 2.b, above, also constitutes criminal conduct. Applicant did not admit or deny this paragraph, which is viewed as a denial.

### **Mitigation**

The Operations Manager at Applicant's employer submitted a letter on Applicant's behalf. He states that Applicant is a "professional, dependable and hard working individual who is never afraid to take on a challenging task." He goes on to state that Applicant "is a man of great integrity and work ethic." (Applicant Exhibit A.)

### **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 to be used as appropriate 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 over-arching 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 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, "Any 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 adverse to an applicant 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 concerns relating to the guideline for Financial Considerations are 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. The Applicant had approximately \$78,000 in past due debts, all of which had 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." AG ¶ 20(b) states that the disqualifying conditions may be mitigated where "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." The majority of Applicant's debts relate to his medical care while he was unemployed. Applicant's financial difficulties arose between 2006 and 2010, and since he has not resolved all of the debts which caused the problems, continue to date. These two mitigating conditions have some application in this case.

AG ¶ 20(d) states it can be mitigating where, "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant has made steps in this direction, by making payment arrangements with three of his major creditors. However, these arrangements have not even been in existence for a year, and Applicant has no track record of making such payments over a sustained period of time, thereby making it impossible to apply this mitigating condition in whole at this point.

Finally, even taking Applicant's payments into account, he still owes over \$70,000 with no clear plan for resolving these debts. It is also not in his favor that he did not fulfill several promises he made to clear several of the debts. I cannot presently find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c). Looking at his entire financial situation as a whole at this time, I cannot find that he has mitigated the Government's security concerns. Paragraph 1 is found against Applicant.

## **Paragraph 2 (Guideline E, Personal Conduct)**

The security concerns relating to Personal Conduct are set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or 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

Applicant's conduct in falsifying his e-QIP and involvement in drug and alcohol related criminal incidents brings into play the following disqualifying conditions under 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;

(c) credible adverse information in several adjudicative 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; and

(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. . . .

Applicant knowingly and purposely falsified his security clearance application on May 28, 2010. He admitted these falsifications in his Answer. I have considered his explanation for not disclosing his 2008 arrest and the fact he was attending a diversion program, and find that his false denial and omission are not justified. He knew the questions applied to him and made a knowing and conscious decision not to answer them properly. His drug and alcohol arrests could adversely affect his professional and community standing. Applicant testified that no one at his place of employment knows the facts about this case. Accordingly, AG ¶ 17(a) "the individual made prompt, good-faith efforts to correct the omission, concealment or falsification before being confronted with the facts," does not apply.

Applicant's two arrests were in 2008 and 2009. However, he did not complete his diversion program until 2011, after he falsified his e-QIP. AG ¶ 17(c), "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," also does not apply.

AG ¶ 17 (d) says it can be mitigating where, "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur." Applicant did not present sufficient evidence to show that he truly understands the gravity of his falsification, or the importance of personal integrity in the security clearance process. This mitigating condition does not have application in this case.

Applicant is no longer involved with the women who got him into trouble in 2008 and 2009. Accordingly, AG ¶ 17(e) applies, "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress." The application of this condition, however, is insufficient to overcome the adverse inference of his falsifications and criminal conduct. In particular, I have examined the span of time, just



two years, since the falsifications. There is insufficient evidence that Applicant currently shows consistent good judgment or is reliable. Paragraph 2 is found against Applicant

### **Paragraph 3 (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.

I have considered the disqualifying conditions under AG ¶ 31 and especially considered the following:

- (a) a single serious crime or multiple lesser offenses; and
- (b) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

As stated at length above, Applicant was arrested for alcohol and drug related criminal conduct in 2007 and 2008. The first arrest resulted in a conviction and the second in a diversion program. His conduct was serious and relatively recent. Both of the disqualifying conditions apply to his conduct.

I have examined the mitigating conditions and there is only one that applies under 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 and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant stated that each incident occurred, at least partially, because of personal relationships that were not in his best interests. His last arrest was almost four years ago, and there is no indication of a current problem with law enforcement authorities. Under the particular circumstances of this case he has mitigated the security significance of his criminal conduct. Paragraph 3 is found for 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 relevant 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 must 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 relevant facts and circumstances surrounding this case. The discussion under Guidelines F, E, and J, above, applies here as well. Applicant has had financial problems for several years, which have not been completely resolved. He also had problems with law enforcement, and intentionally falsified his e-QIP. Applicant is beginning to make strides with his finances, which were out of control for some time. In addition, he is obviously an intelligent and talented employee. However, his conduct with regards to his finances was not shown to be mitigated, and he needs to understand that full disclosure with the Government is a requirement, not a suggestion.

Under AG ¶ 2(a)(3), his conduct is recent. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation and his personal conduct. As stated above, he has mitigated the security significance of his criminal conduct. Accordingly, the evidence supports denying his request for a security clearance.

### **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 through 1.r:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.d:	Against Applicant

Paragraph 3, Guideline J:

FOR APPLICANT

Subparagraph 3.a.:

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.

WILFORD H. ROSS  
Administrative Judge