



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



In the matter of: )  
)  
) ISCR Case No. 11-00232  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2012

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline J, criminal conduct. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On September 16, 2011, 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 J, criminal conduct. DOHA acted 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 on September 1, 2006.

Applicant answered the SOR in writing on September 30, 2011, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on February 27, 2012. The FORM was mailed to Applicant, and proof of receipt was received by DOHA on March 6, 2012. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant chose not to submit additional evidence. The case was assigned to me on May 10, 2012.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations in ¶¶ 1.a through 1.y. He also admitted SOR ¶¶ 2.a and 2.c, while denying 2.b and 2.d. His admissions are incorporated into my findings of fact. I make the following additional findings of fact.

Applicant is a 36-year-old employee of a defense contractor for whom he has worked since April 2002. He is a high school graduate. He was married in 1998, but divorced in 2009. He has three children ages 16, 12, and 9. His "take home" pay is about \$3,000 per month. He stated that he was diagnosed with and treated for multiple sclerosis since 2004.<sup>1</sup>

The SOR alleges 25 delinquent debts totaling about \$11,475. The debts are supported by credit reports, dated September 2, 2010, March 8, 2011, and August 2, 2011. Although he has medical insurance through his job, he attributes most of his delinquent debts to medical co-payments resulting from his multiple sclerosis treatment. The remaining delinquent debts are various consumer debts which he claims originated from his ex-wife's credit card use. In September 2010, he told a DoD investigator that he was going to hire a debt consolidation company to assist him in paying off his debts. There is no evidence in the record that he did so. In his September 2011 answer to the SOR, he indicated he was filing for bankruptcy protection and that his parents were going to assist him with his medical debts from now on. He presented no evidence to support either action. There is also no evidence that he sought financial counseling. All the SOR debts are outstanding.<sup>2</sup>

In August 2009, Applicant and his girlfriend were at a local amusement park where they found a key to a storage locker. His girlfriend used the key to enter the locker where they found a purse. They took the purse and stole some of the contents including money and vicodin prescription pills. Their actions were seen by security personnel through on-site cameras and they were arrested. Applicant was also charged with possessing Percocet, which he claimed he had because of his multiple sclerosis. He did not have the prescription bottle for the Percocet in his possession, so he was charged with possession of a narcotic. Applicant admitted to his role in crime, which

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<sup>1</sup> Items 4 and 13.

<sup>2</sup> Items 2, 11-14.

was that of a knowing accomplice. In October 2009, he pleaded guilty to two felony charges, second degree burglary and possession of a schedule two controlled substance. He was given a deferred sentence on both charges contingent on successful completion of three years of probation. His probation ends in October 2012 (See SOR ¶ 2.a).<sup>3</sup>

In December 1995, Applicant was charged with revocation of the deferred sentence he received in October 1994. The October 1994 offense resulted when he and a friend stole a car stereo from a vehicle in a shopping center. He left his pager in the car and the police were able to tie him to the crime. He pleaded guilty to a lesser charge of trespassing and was given a deferred sentence. He ultimately completed his probation after additional conditions were imposed by the court in December 1995 (see SOR ¶¶ 2.b and 2.d).<sup>4</sup>

In November 1994, Applicant invited some friends to his apartment. One of the friends brought some alcohol and they all were drinking. Applicant admitted that he was intoxicated. He and one of his friends got into a disagreement. They began pushing and shoving each other. Applicant stated that the other person was bigger than he was so he went into the kitchen, retrieved a knife, and brandished it to the person he was fighting. The police were called and Applicant was arrested for assault, menacing, and harassment. He pleaded guilty to third degree assault and was sentenced to one year of probation. He successfully completed his sentence (See SOR ¶ 2.c).<sup>5</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 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, 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.

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<sup>3</sup> Items 8-9.

<sup>4</sup> Item 6, 8-9.

<sup>5</sup> *Id.*

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. 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security 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 that an applicant may deliberately or inadvertently fail to 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.

Section 7 of Executive Order 10865 provides that decisions shall be “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**

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

The security concern for Financial Considerations is 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. I have considered all of them under AG ¶ 19 and the following are potentially applicable:

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

Applicant has numerous past-due debts that he was unable or unwilling to satisfy. Both disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20, including the following:

- (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 did not provide sufficient evidence that he paid or resolved any of his delinquent debts. Therefore, his behavior is recent and the delinquent debts remain a concern. I find mitigating condition AG ¶ 20(a) does not apply because Applicant's debts remain owed and unresolved.

Applicant experienced a divorce and medical expenses, which could be considered conditions beyond his control. However, for this mitigating condition to fully apply there must be a showing that Applicant took responsible actions under the circumstances. Applicant failed to make such a showing. He indicated he would seek

debt counseling assistance and/or file for bankruptcy protection, but there is no evidence that he did either. I find AG ¶ 20(b) does not apply.

There is no evidence Applicant sought financial counseling. There is no clear evidence that Applicant's financial problems are being resolved or under control. I find he has not made a good-faith effort to pay his delinquent debts or attempt to resolve them. I find AG ¶¶ 20(c) and 20(d) do not apply.

Applicant failed to document his dispute of any debts. I find AG ¶ 20(e) does not apply.

### **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 an Applicant'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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and
- (d) the individual is currently on parole or probation.

Applicant pled guilty to felony counts of burglary and possession of a controlled substance in 2009. He also pled guilty to assault, trespassing, and burglary in 1994 and 1995. He is also currently on probation. I find that the above disqualifying conditions apply.

I have also considered all of the mitigating conditions for Criminal Conduct under AG ¶ 32 and considered the following relevant:

- (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; and
- (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.

Applicant's criminal conviction is recent and serious. Additionally, he committed his most recent offense after a prior criminal history, which shows rehabilitation has not been successful. He is currently on supervised probation. Applicant failed to provide sufficient evidence that his reliability, trustworthiness and judgment are not in question based upon the nature of his previous offenses. Not enough time has passed to determine whether his rehabilitative efforts have succeeded. Applicant has not presented sufficient evidence establishing either mitigating condition.

### **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.

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 the facts and circumstances surrounding this case. Applicant debt is unresolved with no viable plan in place to address it. He also has a history of engaging in serious criminal behavior as recently as 2009. He failed to provide sufficient evidence to mitigate the security concerns.

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 failed to mitigate the security concerns arising under Guideline F, financial considerations and Guideline J, criminal conduct.

## 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.y	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a - 2.d:	Against 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