



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 11-03055  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel

For Applicant: *Pro se*

April 27, 2012

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP) on November 4, 2010. (Item 4.) On September 16, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H (Drug Involvement), G (Alcohol Consumption), F (Financial Considerations), and E (Personal Conduct) concerning the 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 acknowledged receipt of the SOR on October 25, 2011. (Item 2.) He subsequently submitted an undated Answer to the SOR, and requested a decision be made without a hearing. (Item 3.) Department Counsel submitted a File of Relevant Material (FORM) to Applicant on November 23, 2011. Applicant received the FORM on November 29, 2011, and was given 30 days to submit any additional information. Applicant elected not to submit any additional information. The case was assigned to

me on January 24, 2012. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 42, and divorced. However, he continues to live with his former spouse. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment. Applicant admitted all of the allegations in the SOR. Those admissions are findings of fact. Applicant's admissions, including those made in response to DOHA interrogatories,<sup>1</sup> are incorporated into the following findings of fact.

#### **Paragraph 1 (Guideline H, Drug Involvement)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he used illegal drugs.

Applicant has used cocaine with varying frequency from at least October 1999 until April 2010. He admitted that in 2005, 2009, and 2010 he would drink in bars and use cocaine after drinking. As a condition of employment, he has been subject to drug tests with various employers since 1999. Applicant tested positive for cocaine in 1999, twice in 2006 and most recently in 2010. He was terminated from jobs in 1999 and 2010 because of his cocaine use. As a result of his drug use Applicant voluntarily attended treatment in approximately 2005, which was also for alcohol use. He used cocaine at least twice after that treatment. Applicant states that he had a security clearance from 1996 through 2005. In an interrogatory dated August 10, 2011, Applicant indicates that he has been drug free since April 2010. (Item 7 at page 6.)

In addition to his more recent cocaine use, Applicant used marijuana in the 1980s and 1990s. He also used and sold LSD in the 1980s, when he was in high school. He was arrested for selling LSD at that time. (Item 7 at pages 4-5, and Item 10 at page 3.)

#### **Paragraph 2 (Guideline G, Alcohol Consumption)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has use intoxicants to excess.

Applicant has a long history of alcohol use, which resulted in five alcohol related arrests for Driving While Intoxicated between 1988 and 1990. This was when Applicant was 18 to 20 years old. (Item 6 at pages 6-7, and Item 10.)

Applicant received treatment for his alcohol use in 1990 and 2005. The treatment in 1990 was court ordered after his last alcohol-related arrest. Applicant indicated after

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<sup>1</sup>Items 5, 6 and 7.

each treatment that they were successful in educating him about the risks of alcohol abuse. (Item 6 at page 8, and Item 10 at pages 2-3.) Both times Applicant eventually began using drugs and alcohol again. As of November 2010 Applicant continues to drink alcohol “socially.” An investigator from the Office of Personnel Management stated that Applicant, “has not attempted to stop or reduce consumption, he has had no problems with alcohol since the DUI.” (Item 6 at page 6.)

### **Paragraph 3 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he failed to meet legal and financial obligations regarding his taxes, and is financially overextended and therefore at risk of having to engage in illegal acts to generate funds.

Applicant admits that he has failed to file his Federal and state tax returns for the tax years 2005 through 2009. An investigator from the Office of Personnel Management stated that Applicant, “felt that his taxes were always taken out and he did not have to file because he did not owe.” (Item 6 at page 9.) No information was submitted by Applicant as to whether any of the tax returns have been filed since issuance of the SOR.

The Government also alleges that Applicant owes approximately \$30,000 on a second mortgage for a house that was foreclosed on in approximately 2005. (Item 8.) This was a time Applicant was between jobs and unable to make payments. He believes that the foreclosure by the first trust deed holder wiped out the interest of the second mortgage lender. (Item 6 at 3.) However, he did not submit any information to me showing that this belief is a correct reading of the law. I find that this debt is still due and owing.

### **Paragraph 4 (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; that he engaged in misdemeanor criminal conduct in 2011; and that the conduct, set forth under Paragraphs 1, 2, and 3, above, shows poor judgment, unreliability and untrustworthiness under this Paragraph.

Applicant filled out an e-QIP on November 4, 2010. (Item 4.) Section 26.c. asks Applicant, “Have you failed to pay Federal, state, or other taxes, or to file a tax return, when required by law or ordinance?” He answered, “No.” This was a false statement to a relevant question concerning his income tax status. Applicant admitted this allegation without explanation.

The same 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.) (Item 4.) He

answered, "Yes," and listed an alcohol-related arrest in January 1990.<sup>2</sup> Applicant did not set out his four other alcohol-related arrests during that time, or his 1987 arrest for selling LSD. However, in March 1998, Applicant had been interviewed by a Special Agent of the Defense Investigative Service. In a sworn statement, Applicant freely admitted all of his alcohol arrests and that for LSD sales. (Item 10.) The Government had a contemporaneous statement from Applicant concerning those incidents, which provided sufficient notice of their existence. Accordingly, I find Applicant did not have an intent to deceive the Government concerning these incidents. SOR 4.b. is found for Applicant.

Applicant admits to pleading No Contest to charges of Criminal Nuisance and Failure to Appear in April 2011. As a result of his plea he received a fine. (Item 9.) From the available evidence, this appears to be a minor incident, which has minimal security significance. (Item 5.)

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

## **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. 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 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. 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.

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<sup>2</sup>An arrest of that date is not alleged in the SOR. Based on all of the available evidence, it is probably the arrest set forth in SOR 2.g.

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 H - Drug Involvement)**

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

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. Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances; Drug abuse is the illegal use of a

drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any drug abuse;
- (b) testing positive for drug use; and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia.

Applicant used marijuana and LSD in the 1980s, while a teenager. He also sold LSD at that time. Of more concern is his use of cocaine from at least October 1999 through April 2010. For at least part of that time he held a security clearance. He has been tested multiple times for drug use, which is a requirement of his employment, and has been found positive four times. He was terminated from at least two jobs because of this action. Applicant states that he has not abused any drugs since 2010 and will not use them in the future. However, he submitted no evidence that he is currently in a drug treatment program

I have studied all of the mitigating conditions under 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
- (b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant offered no evidence that would support mitigation under AG ¶¶ 26(c) or (d). The evidence is clear that the Applicant's abuse of cocaine was the voluntary action of a mature person. He states that he has been drug free over a year and a half as of the time the record closed. However, given the fact that he has repeatedly used cocaine when he knew he was subject to random urinalysis as a requirement of his job, this statement does not carry much weight. Enough time has not passed for me to say with any degree of confidence that he will not use cocaine in the future. Paragraph 1 is found against Applicant.

## Paragraph 2 (Guideline G - Alcohol Consumption)

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Applicant admitted that he used alcohol, occasionally to excess, from 1988 until at least November 2010. He had several alcohol related arrests from 1988 to 1990. He also had alcohol and drug treatment in 2005. Applicant continues to use alcohol, despite the fact that he would usually use drugs while under the influence of alcohol.

The following disqualifying conditions apply to this case under AG ¶ 22:

(a) alcohol-related incidents away from work, such as driving while under the influence, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

I have examined the potential mitigating conditions under this paragraph and find none of them apply. AG ¶ 23(a) states that it can be mitigating when, "so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness or good judgment." In addition, AG ¶ 23(b) states that is mitigating where, "the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)." Finally, AG ¶ 23(c) states that it can be mitigating where, "the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress."

In this case Applicant has used alcohol to excess for many years. While his alcohol related arrests are in the far past, over 20 years ago, he continues to use alcohol. In addition, and most disturbingly, he admits that alcohol reduces his inhibitions, and that is when he would use cocaine. It is Applicant's burden to show that his long-standing and serious alcohol abuse was a thing of the past. He did not do so. Paragraph 2 is found against Applicant.

### Paragraph 3 (Guideline F, Financial Considerations)

The security concern relating to the guideline 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. Three apply under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant, by his own admission, has a \$30,000 in past-due mortgage debt, which has been due and owing for several years. In addition, he has failed to file five years of Federal and state tax returns. 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." Applicant's financial difficulties are of a longstanding nature. As stated above, he has not filed any of the delinquent tax returns discussed in the SOR. He submitted no information about the status of the past due mortgage. It is Applicant's burden to submit evidence showing that his financial situation has improved. He has not done so. This mitigating condition is not applicable to this case.

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." Applicant stated that a lack of employment may have contributed to his foreclosure, and this mortgage debt. He submitted no information about how he intends to resolve it. This mitigating condition is not applicable to this case.



Applicant has not initiated a good-faith effort to pay off his creditors, or otherwise resolve his major debt. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that he is at least \$30,000 in debt, and has not filed any of the subject tax returns, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c). Paragraph 3 is found against Applicant.

#### **Paragraph 4 (Guideline E - Personal Conduct)**

The security concern relating to Personal Conduct is 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.

I have considered the disqualifying conditions under AG ¶ 16 and especially considered the following:

(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; 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 November 4, 2010. He admitted this falsification on his Answer. His drug and alcohol abuse, and his failure to comply with tax laws, if known, would affect his professional and community standing. 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.

I have reviewed the other mitigating conditions and find none of them apply to the facts of this case. In particular, I have examined the span of time, less than two years, since the falsification. In addition, there is his continued use of alcohol, his continuing failure to file tax returns, and the fact that his last cocaine use was less than two years ago. There is insufficient evidence that Applicant currently shows good judgment or is reliable. Paragraph 4 is found against Applicant.<sup>3</sup>

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<sup>3</sup>As stated, subparagraphs 4.b., and 4.f. are 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 applicant's conduct and all the 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a drug user, abuser of alcohol, under a financial strain, and falsified a questionnaire. None of these situations appear to be under control. Under AG ¶ 2(a)(3), Applicant's conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)), and that there is a high likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions or 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 drug use, alcohol consumption, financial situation, and personal conduct at this time

On balance, it is concluded that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2, 3, and 4 of the Government's Statement of Reasons.

## 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 H:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.g.:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a. through 2.g.:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a. through 3.c.:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraph 4.a.:	Against Applicant
Subparagraph 4.b.:	For Applicant
Subparagraph 4.c.:	Against Applicant
Subparagraph 4.d.:	Against Applicant
Subparagraph 4.e.:	Against Applicant
Subparagraph 4.f.:	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