



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



In the matter of: )  
)  
) ISCR Case No. 14-05564  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

December 16, 2016

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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 April 12, 2013. (Government Exhibit 1.) On February 6, 2015, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H (Drug Involvement), F (Financial Considerations), and E (Personal Conduct) concerning Applicant. The action was taken 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) effective within the Department of Defense for SORs issued after September 1, 2006.<sup>1</sup>

Applicant answered the SOR in writing on March 5, 2015 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared

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<sup>1</sup>Applicant was the subject of an earlier ISCR case, 06-02933. There is no indication that an SOR was issued in that case, and neither myself or Department Counsel have any knowledge of Applicant or any prior adjudication. (Government Exhibit 1, Section 25; Judge Exhibit I; Tr. 91-94.)

to proceed on May 7, 2015. This case was assigned to me on March 28, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 30, 2016. I convened the hearing as scheduled on April 21, 2016. The Government offered Government Exhibits 1 through 6, which were admitted without objection. Applicant submitted Applicant Exhibits A through AA, which were admitted without objection, and testified on his own behalf. Applicant asked that the record remain open until May 6, 2016, for the receipt of additional documents. He submitted Applicant Exhibit BB on May 5, 2016, and it was admitted without objection. DOHA received the transcript of the hearing (Tr.) on May 2, 2016. The record closed on May 6, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 38, married, and has two children. He has a master's degree in business administration. Applicant is employed by a defense contractor as a manager and seeks to obtain a security clearance in connection with his employment. Applicant admitted all allegations of the SOR with explanations. Applicant's admissions 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 used various drugs from 1992 until approximately March 2011.

Applicant first began using marijuana in 1992, when he was in high school. He last used it at his bachelor party in March 2011. Applicant used cocaine from about January 2006 until his last use, also at his bachelor party in March 2011. Applicant used Ecstasy in approximately 2006 through 2007. (Tr. 35-36, 64-71.)

Applicant received a security clearance in approximately March 2006. During the time he held it Applicant used various illegal drugs, as described above, until March 2011. Applicant realized at the time he was using drugs that it violated his company's policies, government policies, and the law. During the time he was using drugs he never told anyone at his company about it. (Government Exhibit 1, Section 25; Tr. 72-77.)<sup>2</sup>

As stated above, Applicant filled out his latest e-QIP in April 2013. In that document Applicant gives a complete history of his drug usage. (Government Exhibit 1 at Section 23.)

Applicant submitted a signed statement of intent. In that statement he agrees that any security clearance he may be granted can be automatically revoked for any future drug use. (Applicant Exhibit A; Tr. 35-36.)

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<sup>2</sup>Another Government agency denied Applicant SCI access on October 24, 2012. (Government Exhibit 2.)

With regard to his drug use in general Applicant states, "I can't justify it. It's - - It's something that I did in the past. There's no justification. All I can do is take responsibility for my actions, show good faith over a period of time that I have not done that and I've changed." (Tr. 71.) Applicant's family is the most important thing in his life, and that is an important reason in his decision to stop using drugs. His life consists of his family and work. (Applicant Exhibit Z; Tr. 39, 54.)

## **Paragraph 2 - (Guideline F - Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

Applicant bought a house with a friend in 2005. In 2007 they refinanced the house and obtained both a first mortgage for \$506,000 and a home equity line of credit for \$135,200. When the housing market collapsed beginning in 2008 Applicant quickly found himself under water on the house. His partner lost his job, and transferred his part of the house to Applicant in 2010. (Applicant Exhibits B, C, and D; Tr. 39-40.)

In 2010 Applicant started to have problems making his payments. He did not want to walk away from the property or have it foreclosed on by the mortgage holders. At that time the property was worth less than the total amount of the loans. Applicant hired a representative to work for him with his mortgage holders. In 2013 the holders of Applicant's first mortgage agreed to modify their loan, and it has been modified. (Applicant Exhibits E, F, and G; Tr. 40-43.)

The situation regarding the home equity line of credit is unclear. Applicant states that his representative worked out a deal where the line of credit was forgiven by the lender. Applicant had no documentation supporting any such deal. Applicant was unable to confirm that he had received an IRS Form 1099 concerning the forgiveness of the debt. The two most recent credit reports, one provided by the Government and the other by Applicant, show this debt as a charge-off in the amount of \$127,000. (Government Exhibit 6; Applicant Exhibits I and BB; Tr. 48-49, 54-55.)

Applicant's current financial situation is stable. He is able to pay all of his current indebtedness without a problem. (Government Exhibit 6; Applicant Exhibits I and J; Tr. 47.)

## **Paragraph 3 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that shows poor judgment, untrustworthiness, or unreliability.

Applicant did not have a security clearance in 2013. However, he often handled company sensitive information. In February and July 2013 Applicant failed to properly secure such sensitive information. He received a written warning after the second

incident. Applicant has taken refresher training and received personal briefings from security personnel concerning how to protect and safeguard sensitive information. Applicant has taken additional steps to avoid such incidents in the future, beyond what the rules require. (Government Exhibit 2; Applicant Exhibits K, L, and M; Tr. 50-52.)

Applicant's conduct described under Paragraph 1, above, will also be considered under this paragraph.

## **Mitigation**

Applicant is a highly respected and successful professional. He submitted letters of recommendation from co-workers and superiors. He is described as a person who is trustworthy and capable of holding a security clearance. In addition, the writers say that Applicant had briefed them on the nature and content of this proceeding. (Applicant Exhibits W, X, and Y.)

Applicant also submitted his performance appraisals from 2010 to 2015. They show him to be taking on jobs of increasing responsibility, and that he exceeded expectations every year. They show that his supervisors view Applicant as an able and talented person. (Applicant Exhibits P, Q, R, S, T, U, and V.)

## **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 AG ¶ 2(a) describing 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.

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; and

(g) any illegal drug use after being granted a security clearance.

Applicant admits using marijuana and other drugs both before and after he began working for his employer. What is of concern is that he used marijuana, cocaine and Ecstasy from 2006 to 2011, during the time he held a security clearance.

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 sufficient evidence that would support mitigation under AG ¶¶ 26 (a), and (b). Obviously, and as admitted by Applicant, he showed extremely poor judgment in using illegal drugs while holding a security clearance. It has been five years since he engaged in such conduct, and it is also obvious that his marriage and becoming a father has had a maturing affect on him. He submitted a signed statement of intent, with knowledge of the impact future drug use could have on his career. Applicant has mitigated the impact of his past drug use and Paragraph 1 is found for him.

## **Paragraph 2 (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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be negligent, unconcerned, or irresponsible in handling and safeguarding classified information.<sup>3</sup>

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. Applicant, based on documentary and testimonial evidence, had a home equity line of credit that he could not resolve, due primarily to the housing crisis that began in 2008. 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), disqualifying conditions 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." In addition, AG ¶ 20(b) states that 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 evidence shows that both of the above mitigating conditions apply to Applicant. Applicant was caught up in the financial crisis of 2008. The friend, who Applicant bought his house with, lost his job in 2010. This left all the financial burden on Applicant. It took him three years to modify the first mortgage on his house, which he was successful in doing. According to Applicant, the person he hired to resolve his first mortgage also got the holder of the line of credit to forgive that debt. While it would have been better if he could have shown a 1099, showing forgiveness of the debt, under the particular circumstances of this case I find that he has behaved in a reasonable fashion concerning his mortgage debts.

It is Applicant's responsibility to set forth his financial situation in a sufficient way so that I can make a finding that he has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," as required by AG ¶ 20(d). Applicant has done so. Given the state of the record, I also find that his current financial situation is stable, and that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c). Paragraph 2 is found for Applicant.

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<sup>3</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

### **Paragraph 3 (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. 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.

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

(c) credible adverse information in several adjudicative issue 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.

The following mitigating condition under AG ¶ 17 applies to the facts of this case:

(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.

In 2013 Applicant had two incidents where he did not handle company sensitive information properly. He was counseled about the situation, took the counseling to heart, and has had no further incidents. Applicant's drug use is a thing of the past, and he shows himself to be a mature, successful, and intelligent employee. 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 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. Under AG ¶ 2(a)(3), Applicant's conduct is not recent. Based on the state of the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I also find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)), and that there is also little to no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his drug use, financial situation, and personal conduct.

On balance, it is concluded that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2, and 3 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: | FOR APPLICANT |
| Subparagraph 1.a:         | For Applicant |
| Subparagraph 1.b:         | For Applicant |
| Subparagraph 1.c:         | For Applicant |
| Subparagraph 1.d:         | For Applicant |
| Paragraph 2, Guideline F: | FOR APPLICANT |
| Subparagraph 2.a:         | For Applicant |
| Paragraph 3, Guideline E: | FOR APPLICANT |
| Subparagraph 3.a:         | For Applicant |
| Subparagraph 3.b:         | For Applicant |
| Subparagraph 3.c:         | For Applicant |

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge