



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01045

**Appearances**

For Government: Meg Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

10/05/2016

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant has a history of failing to comply with basic rules and regulations. He also has shown an inability or unwillingness to pay his financial obligations. Questions about his current reliability, trustworthiness, judgment, and ability to comply with the law and protect classified information remain. He failed to mitigate the Guidelines E and F security concerns. Clearance is denied.

**Statement of the Case**

Applicant submitted his most recent security clearance application (SCA) on March 11, 2014. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant eligibility for a clearance. On October 30, 2015, the DOD issued him a Statement of Reasons (SOR) alleging security concerns under Guideline E (personal conduct) and Guideline F (financial considerations).<sup>1</sup> Applicant answered the

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<sup>1</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines*

SOR on November 12, 2015, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on April 12, 2016. DOHA issued a notice of hearing on April 27, 2016, scheduling a hearing for May 9, 2016. At the hearing, the Government offered seven exhibits (GE 1 through 7). Department Counsel withdrew GE 2 and it was not admitted as evidence. Applicant testified and submitted one exhibit (AE 1) post-hearing. All exhibits were admitted without objection (except for GE 2). DOHA received the hearing transcript (Tr.) on May 19, 2016.

### **Procedural Issues**

At the hearing, the Government moved to amend the SOR to correct typographical mistakes. Applicant did not object, and I granted the motion. (Tr. 12 - 13) SOR ¶ 1.j was amended by deleting the year “3008” and substituting the year “2008.” SOR ¶ 2.a was amended by deleting “1.b., 1.c., 1.e., 1.f., 1.k. through 1.aa.” and substituting therein “1.l. through 1.x.”

### **Findings of Fact**

In his answer, Applicant admitted all the factual allegations in the SOR with explanations. His admissions to the SOR and at his hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 33-year-old employee of a defense contractor. He received his bachelor's degree in 2005. He married in September 2015, and he has no children. Applicant was granted a top secret security clearance in 2008, and his eligibility has been continued to the present.

Applicant's employment history shows that he was employed between March 2002 and June 2007. He was employed part-time as a bartender from 2007 to February 2011. He has been working for different defense contractors since February 2011. During an interview with a government investigator in April 2014, Applicant indicated that he was unemployed for about one month in 2014. He was also unemployed between October 2015 and April 2016. (Tr. 29)

Applicant disclosed in his 2014 SCA (Section 22 – Police Record) that he was convicted for driving under the influence of alcohol (DUI) in November 2012. He was sentenced to one year of probation and required to attend six weeks of alcohol awareness training. He also disclosed in response to Section 26 (Financial Questions) that his homeowner's association (HOA) obtained two judgments against him for his

failure to pay the HOA's fees. He claimed his lawyer established a payment agreement in 2013, and that he was making monthly payments.

The subsequent background investigation disclosed the 24 incidents alleged in the SOR, which include the following traffic violations: (SOR ¶¶ 1.a through 1.k)

2005 (driving without a license, failure to appear in court, and license suspended);

2008 (driving on a suspended license, driving uninsured vehicle);

2009 (driving on a suspended license, failure to appear in court, and license suspended);

2010 (driving on a suspended license);

February 2013 (driving through/in a safety zone, failed to pay the fine, and license suspended);

June 2013 (failed to stop at stop sign, failed to pay the fine, and license suspended);

April 2014 (driving on a suspended license, failure to display license on command, failure to use seatbelt);

May 2014 (failed to use seatbelt, failed to pay the fine, and license suspended);

July 2014 (speeding, failed to pay the fine, and license suspended);

2015 (driving on suspended license, possession of suspended license, failed to surrender suspended license, failed to appear in court, and a warrant was issued against him)

Applicant also accumulated 11 parking tickets (totaling about \$1,300) that he failed to pay and were referred for collection. (SOR ¶¶ 1.i through 1.v) As indicated previously in his 2014 SCA, Applicant had two judgments filed against him in 2011 and 2014 (totaling about \$9,000) for delinquent HOA fees.

Applicant acknowledged the seriousness of his 2012 DUI conviction, and testified he learned a valuable lesson. Between 2005 and 2015, Applicant failed to appear in court five times. He claimed that at least in two of those instances, he did not receive a notice. (Tr. 17) Later during the hearing, Applicant stated that "at no time [did] I ever purposely failed to appear [for] a court date." He claimed that if he failed to appear for a court date it was because he did not receive notice. (Tr. 30) Applicant also noted that in 2005 he was in college and working as a bank teller. He averred that because of his performance he kept getting promoted in the banking industry. (Tr. 32)

Applicant explained that he did not consider his traffic offenses serious enough to jeopardize his eligibility for a clearance, and implied that was the reason he did not address them sooner. He believes he is only guilty of procrastinating in paying his traffic violations, parking tickets, and HOA fees.

Applicant failed to pay traffic fines in February 2013, May 2014, and July 2014. He testified that he was not completely sure, but that likely he failed to pay the fines because he was going through some financial difficulties.

Applicant submitted a copy of his driver's license, issued in September 2015, as evidence that before the issuance of the October 2015 SOR he had resolved about 90 percent of his traffic violations. He claimed that if he had not paid his overdue fines, and resolved any outstanding warrants and tickets, his state would not have renewed his driver's license.

Applicant has been residing in a home that he purchased in 2009. About five to six months before his hearing, he refinanced his home, and he was currently in good standing with his mortgage payments.

Applicant noted that he has been working in the IT community since 2008. He claimed he has been employed in positions of responsibility because of his technical expertise, knowledge, professionalism, and valuable contributions to his employers.

Concerning his 11 traffic tickets in collection by a neighboring state, Applicant noted that he lives in a different state and the neighboring state's parking tickets do not affect his ability to have a driver's license in his state. He acknowledged that he procrastinated paying his parking tickets, but claimed that he paid all of them. Applicant failed to submit documentary evidence showing that the 11 parking tickets in collection had been paid.

SOR ¶ 2.a cross-alleged that Applicant had 11 delinquent traffic tickets in collection, and two judgments filed against him in 2011 and 2014, totaling about \$9,349. During his April 2014 interview, Applicant told the investigator that he had set up a payment plan and that he had made some payments. In his answer to the SOR, Applicant wrote "Admit. Current arrangement with attorney." He failed to submit documentary evidence to support his claims.

At his hearing, Applicant claimed he went to court in an unspecified date, worked out a payment arrangement with the creditor of the two judgments, and was current on his payments. (Tr. 39-41) He was allowed additional time after the hearing to submit documentary evidence of his payment agreement and of any payments made. Applicant submitted documentary evidence of a payment agreement he signed on January 26, 2016, agreeing to pay \$460 per month starting in February 2016. Applicant presented no evidence of any payments made pursuant to the agreement.

Applicant does not believe he is a threat to national security. He believes he was just immature and procrastinated making payments. Applicant also believes that his circumstances have changed because he is now married. He averred he has matured, and his main concern now is his family, and to be a valued employee. He testified that his wife is a registered nurse and between their two incomes they will not have any financial problems.

## **Policies**

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Guideline E, Personal Conduct**

AG ¶ 15 articulates the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and 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 was convicted of DUI in 2012. Between 2005 and 2015, he accumulated numerous traffic offenses including driving without a license or with a suspended license, failure to show license or surrender it to the police, no seat belts, speeding, and uninsured vehicle. In October 2015, he had three outstanding warrants against him for failure to pay his tickets and failure to appear in court. Additionally, he had 11 delinquent traffic citations from a neighboring state that were in collection. He also had judgments filed against him in 2011 and 2014, totaling over \$9,000.

Applicant's pattern of repeated misconduct and his failure to obey traffic rules trigger the applicability of the following disqualifying conditions under AG ¶ 16:

(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; 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.

AG ¶ 17 lists conditions that could potentially mitigate the personal conduct security concerns:

(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;

(d) 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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's evidence is insufficient to mitigate the Guideline E security concerns. Applicant has a 10-year history of repeated traffic violations, failure to pay fines, failure to appear in court, and had at least three warrants issued against him. Moreover, he has a 2012 DUI conviction, 11 parking tickets in collection, and two unpaid judgments.

Applicant recently resolved his traffic offenses and was reissued his driver's license. He failed to submit evidence to show that he paid his 11 parking tickets and that he has been making payments on his judgments. Considering the evidence as a whole, I find that Applicant's questionable behavior occurred under normal circumstances during a lengthy period. In light of the number of offenses, the nature of the offenses, and his recidivism, I find the passage of time so far is insufficient for Applicant to establish his questionable behavior is unlikely to recur. Additional time without recurrence of traffic offenses, criminal activity, and the absence of delinquent fines is necessary for Applicant to establish his reliability, trustworthiness, and good judgment. Applicant's future behavior must demonstrate his willingness and ability to comply with rules and regulations to establish his eligibility for a clearance. For the above reasons, I find that none of the personal conduct mitigation conditions apply.

## **Financial Considerations**

Under Guideline F, the security concern is that 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. (AG ¶ 18)

This concern is broader than the possibility that an individual might knowingly compromise classified 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 irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant's financial concerns are based on his failure to pay 11 parking tickets (totaling \$1,300) and two judgments from 2011 and 2014 (totaling over \$9,000). AG ¶ 19 provides disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts" and (c) "a history

of not meeting financial obligations.” The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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;<sup>2</sup> 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.

The Appeal Board concisely explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance

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<sup>2</sup>The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).



of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Considering the evidence as a whole, and for the same reasons outlined in the discussion of the personal conduct security concerns, incorporated herein, I find that no mitigating conditions apply. Applicant’s questionable behavior is recent and occurred during a period spanning at least 10 years. He failed to establish that his misconduct or illegal behavior is unlikely to recur, and it still casts doubt on Applicant’s current reliability, trustworthiness, and good judgment.

Applicant presented some mitigating information. He recently married and his new wife will help him resolve any future financial problems. Additionally, his evidence shows he was unemployed or underemployed during three short periods. Notwithstanding, Applicant’s evidence failed to show that he was financially responsible addressing his delinquent obligations. There is no evidence to show Applicant received financial counseling, or that his financial problems are being resolved or are under control. He failed to submit documentary evidence showing that he paid his parking tickets and that he is making payments on his judgments.

I carefully considered the mitigating conditions outlined under AG ¶ 20(a)-(f). For the same reasons discussed under Guideline E above, incorporated herein, I find that Applicant’s evidence is insufficient to mitigate the disqualifying conditions in AG ¶¶ 19(a) and 19(c). The passage of time so far is insufficient for Applicant to establish his self-control, good judgment, and his willingness to abide by rules and regulations. A track record of paying his fines and judgments is necessary for Applicant to establish his reliability, trustworthiness, and ability to protect classified information.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 33-year-old employee of a defense contractor. He was granted a top secret level security clearance in 2008. He has a ten-year history of failing to comply with basic rules and regulations. And, he has shown an inability or unwillingness to pay

his financial obligations. His actions raise a concern about his inability or unwillingness to comply with the law, rules, and regulations. On balance, Applicant's evidence is insufficient to mitigate the security concerns raised by his personal conduct while possessing a security clearance, and his failure to pay his financial obligations.

### **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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.x:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge