



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-02708

**Appearances**

For Government: Andrew Henderson, Esquire, Department Counsel

For Applicant: *Pro se*

February 23, 2017

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**Decision**  
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ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on August 8, 2014. (Government Exhibit 1.) On November 12, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations) and G (Alcohol Consumption). 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on January 8, and January 27, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 11, 2016. The case was assigned to me on April 19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 5, 2016. I convened the hearing as scheduled on June 28, 2016. The Government offered Government Exhibits 1 through 8, which were admitted without objection. Applicant testified on his own behalf. I granted Applicant's request to leave the record open until July 15, 2016, to permit him to submit additional evidence. On July 14, 2016, he submitted Applicant Exhibit A; and on July 15, 2016, he submitted Applicant Exhibit B. Department Counsel had no objection and the exhibits were admitted into the record, which closed as scheduled. DOHA received the transcript of the hearing (Tr.) on July 8, 2016.

### **Findings of Fact**

Applicant is a 33-year-old employee of a defense contractor, and currently holds a security clearance in connection with this employment. He has three children from two prior marriages. The children live with their respective mothers and Applicant is current on his child support payments. He received an Honorable Discharge from the Marine Corps, and is a disabled veteran. (Government Exhibit 1 at Section 15; Applicant Exhibit A at 3-5; Tr. 15-17, 24-26.)

#### **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 potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted allegations 1.a and 1.b in the SOR under this Paragraph. He denied 1.c. (Answer.) Applicant submitted additional evidence to support his request for access to classified information.

The SOR lists two delinquent debts, totaling approximately \$31,215. (SOR 1.a and 1.c.) The existence and amount of the debts is supported by credit reports submitted by the Government dated July 22, 2009; August 12, 2014; February 19, 2015; and March 24, 2016. (Government Exhibits 5, 6, 7, and 8.) In addition, Applicant submitted credit reports from each of the three credit-reporting services, all dated July 15, 2016. (Applicant Exhibit B at 4-105.)

Applicant was married to his first wife from 2003 to 2008. He and this wife bought a house during the marriage. They divorced in 2008. As part of the divorce decree a written agreement was made between the parties as to the future status of the property. They agreed that by 2010 the wife was to purchase Applicant's interest in the property, or the property was to be sold. (Applicant Exhibit A at 6-9, 31-36; Tr. 27-29.)

Applicant's ex-wife did not maintain payments on the house, as she agreed. The house was eventually foreclosed upon by the mortgage holder in approximately 2012, and Applicant was responsible for a delinquency on the second mortgage in the amount of \$31,034. (SOR 1.a.) In order to get himself out from under this debt Applicant filed for Chapter 7 bankruptcy relief in 2014. He received a discharge in bankruptcy on September 3, 2014. (SOR 1.b.) (Government Exhibit 2; Applicant Exhibit B at 3.)

In 2013 Applicant was hurt in a bicycle race and incurred medical bills that were not covered by insurance. One of these bills is for \$172, as set forth in SOR 1.c. (Tr. 31-32, 40.)

The Schedule F of the bankruptcy filing shows Applicant properly noticed the mortgage holder, as well as various medical bills. As stated, Applicant received a discharge in bankruptcy. The credit reports submitted by Applicant accurately show both of these debts being resolved in bankruptcy. (Government Exhibit 2; Applicant Exhibit B at 7, 9, 28-29, 48-49; Tr. 43-49.)

Applicant's current financial situation is stable. He submitted documents showing that he has sufficient income every month, as well as savings and investments. Applicant is able to maintain his current debts, and pay child support, as shown by his credit reports. (Applicant Exhibit A, Exhibit B at 4-105; Tr. 50-54.)

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

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has consumed intoxicants to excess. Applicant admitted the sole allegation under this guideline, which alleged that he was arrested for Driving Under the Influence of Alcohol (DUI) on March 9, 2014. Subject was convicted, fined and sentenced to three months summary probation and to take a First Offenders DUI course. He successfully completed all the requirements. Applicant has not drunk any alcohol since the date of the incident. He testified, "Well, the DUI really hit home and made me realize what a stupid mistake it was. And it's just pointless. I didn't feel the need to - - I only drank socially so I didn't find it difficult at all." (Government Exhibit 3 at 5-6, Exhibit 4; Tr. 33-36.)

## **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 (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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." Section 7 of Executive Order 10865 provides: "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."

A person applying for access to classified information seeks to enter 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 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.

## **Analysis**

### **Paragraph 1 (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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two apply to the facts found in this case:

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

Applicant, based on documentary and testimonial evidence, had two delinquent accounts that he formerly could not resolve. 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. His financial problems began when his ex-wife refused to fulfill her part of the divorce decree regarding the sale of the house, which resulted in the house being foreclosed upon and leaving Applicant owing a deficiency on a second mortgage. After attempting to resolve the situation for several years Applicant filed a Chapter 7 bankruptcy, which discharged this debt. In addition, the small medical debt set forth in SOR 1.c was also discharged in bankruptcy. Based on the particular facts of this case, I find that he has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," as required by AG ¶ 20(d).

Applicant has not received financial counseling. However, as shown above, his current financial situation is stable. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c). Applicant has acted in a way that shows good judgment, resolving his financial situation through bankruptcy, which has given him a fresh start. All of the stated mitigating conditions apply to the facts of this case. Paragraph 1 is found for Applicant.

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

The security concern relating to the guideline for Financial Considerations 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.

The guideline at AG ¶ 22 contains seven disqualifying conditions that could raise security concerns. Of these seven conditions, one applies to the facts found in this case, since Applicant had a DUI arrest in March 2014:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, 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.

Applicant has completely abstained from alcohol since the arrest, a period of over two years. He completed the terms of his sentence and evinced a credible intent not to use alcohol in the future. The following mitigating condition under AG ¶ 23 applies to this case, and supports a finding for Applicant:

(a) 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.

## **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 relevant 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 pertinent facts and circumstances surrounding this case. Applicant's current financial situation is stable, and his single DUI is obviously an aberration. I find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). In addition, Applicant's current financial status shows permanent behavioral changes under AG ¶ 2(a)(6), and there is little likelihood of continuation or recurrence under AG ¶ 2(a)(9). Using the whole-person standard, Applicant has mitigated the security significance of his financial considerations and alcohol consumption, and is eligible for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge