



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



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)

ISCR Case No. 15-03952

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

January 23, 2017

---

**Decision**

---

ROSS, Wilford H., Administrative Judge:

On June 30, 2014 Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On May 30, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 on September 1, 2006.

Applicant answered the SOR in writing on June 19, 2015, and requested his case be decided on the written record in lieu of a hearing. On January 13, 2016, Department Counsel submitted the Department's written case. A complete copy of the file of

relevant material (FORM), consisting of Items 1 to 6, was provided to Applicant, who received the file on January 21, 2016.<sup>1</sup>

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit additional information. The case was assigned to me on April 26, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 40 and divorced. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

#### **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 both allegations in the SOR under this Paragraph, which allege his failure to file Federal or state income tax returns for the tax year 2013. Section 26 of his June 2014 e-QIP (Item 3) concerns Applicant's Financial Record. Applicant admitted in answer to one question that he had not filed the subject tax returns, and further stated the reason he did not do so was that he, "Could not afford to pay accountant." Asked to provide a description of any actions he would take to resolve the issue he stated, "I [plan] on filing when I can afford to." Applicant did not submit any information showing that he has filed and paid his taxes for 2013, or subsequent years.

#### **Paragraph 2 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that shows questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

2.a. Applicant admitted that he was arrested on June 25, 2014, and charged with (1) Domestic - Simple Assault/Battery and (2) Domestic – Disorderly Conduct. He filed a

---

<sup>1</sup> Department Counsel submitted six Items in support of the SOR allegations. Item 6 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an interview under oath of Applicant conducted by an interviewer from the Office of Personnel Management on November 24, 2014. A copy of the statement, signed by Applicant, was not provided. Applicant did not adopt the summary as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

plea of Nolo Contendere and the charges were to be dismissed pending completion of a domestic violence course. (Items 4 and 5.)

2.b. Applicant denied that he falsified material facts on an e-QIP he signed on June 30, 2014. His signature certified that his answers were “true, complete, and correct to the best of my knowledge and belief.” (Item 3 at page 32.)

Section 22 of the questionnaire, “**Police Record**,” asks, “**In the past seven (7) years** have you been issued a summons, citation, or ticket to appear in a court or criminal proceeding against you?” and “**In the past seven (7) years** have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement officer?” (All emphasis in original.) He answered both questions, “No.” These were false answers to relevant questions concerning Applicant’s criminal record, especially given that he had been arrested for domestic violence five days before signing the e-QIP. As stated, Applicant elected not to respond to the FORM, and there is no admissible evidence in the file explaining his failure.<sup>2</sup> Therefore, I find his answers to be knowingly false.

2.c. The Government alleges in this subparagraph that the conduct described under Paragraph 1, above, is cognizable under this guideline as well. Applicant did not admit or deny this allegation. However, as stated, he admitted the truth of the underlying conduct.

Applicant did not submit any evidence concerning the quality of his job performance. 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**

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 and mitigating conditions, which are useful 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, the administrative judge applies the guidelines in

---

<sup>2</sup> In Item 6 at page 3 the Government investigator states, “He [Applicant] did not list this arrest because he believed that it occurred after he completed his Security Clearance Application. He said that he possibly signed paperwork for his Security Clearance Application after the arrest, but had already filled out/submitted the application to security officials at [his employer]. He denied any intention to mislead, misinform, or to conceal information from the U.S. Government.”

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(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.

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.

According to 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. 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.

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**

### **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, one condition applies to the facts found in this case:

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant admitted in June 2014 that he had not filed his Federal and state tax returns for 2013. No evidence was submitted that he has since done so, or obtained an extension of time to file the returns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Given Applicant's failure to supply evidence showing that he has filed the subject returns, none of the mitigating conditions are applicable. Paragraph 1 is found against Applicant.

### **Paragraph 2 (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:

(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

(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.

Applicant knowingly and purposely falsified his e-QIP on June 30, 2014, concerning his arrest for domestic violence, and disorderly conduct, five days earlier. These two incidents individually and collectively show questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules or regulations on Applicant's part.<sup>3</sup>

I have reviewed the potential 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 when the record closed, since the falsifications and criminal conduct. There is insufficient evidence that Applicant currently shows good judgment or is trustworthy and reliable. Paragraph 2 is found against 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 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

---

<sup>3</sup> The statements in Item 6 are insufficient to show mitigation for Applicant. Even assuming that Applicant had filled out the e-QIP before the arrest, and signed it after the arrest; he had an obligation to correct the questionnaire to reflect new information.

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 facts and circumstances surrounding this case. Applicant's financial irresponsibility and personal misconduct were recent, voluntary, and occurred when he was a mature adult. Rehabilitation was not demonstrated, nor was unlikelihood of recurrence. Overall, the record evidence as described above leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guidelines for Financial Considerations and Personal Conduct.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.c:	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.

WILFORD H. ROSS  
Administrative Judge

