



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



In the matter of: )  
)  
) ISCR Case No. 15-04086  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mary Margaret Foreman, Esq., Department Counsel  
For Applicant: Jonathan L. Stone, Esq.

07/21/2016

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**Decision**

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CERVI, GREGG A., Administrative Judge:

Applicant has not mitigated the financial considerations and personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86) on September 12, 2014, requesting a security clearance. After reviewing the application and information gathered during a background investigation, the Department of Defense (DOD) Consolidated Adjudications Facility, sent Applicant a statement of reasons (SOR) dated July 29, 2015, explaining it was unable to find that it was clearly consistent with the national interest to grant eligibility for access to classified information. It detailed security concerns under Guideline E, personal conduct, and Guideline F, financial considerations.<sup>1</sup>

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<sup>1</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*

Applicant responded to the SOR on February 25, 2016, and requested a hearing before an administrative judge. The case was assigned to me on April 7, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 25, 2016, scheduling the hearing for May 25, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. Applicant and his supervisor testified at the hearing. DOHA received the hearing transcript (Tr.) on June 3, 2016. The record was held open for Applicant to submit additional information. He submitted exhibits AE A through C, which were admitted without objection.

### **Findings of Fact**

Applicant is a 45-year-old employee of a defense contractor. He has worked for his current employer since 2014. This is his first application for a security clearance. He is a high school graduate. He was married twice; most recently in 2003 and divorced in 2014.

The SOR alleges under Guideline E, that Applicant purchased and used marijuana from approximately 1995 to 2011; submitted a urine test to his employer and resigned soon thereafter, knowing it would be positive for marijuana; falsified his SF 86 by failing to truthfully disclose his past drug use, drug treatment, and his resignation due to a positive drug test. In addition, Applicant was arrested for assault on a female in 2013. The SOR also alleges under Guideline F, one charged-off debt totaling approximately \$10,281. He admitted all of the allegations with explanations.

In his personal subject interview (PSI) with an investigator from the Office of Personnel Management (OPM), Applicant admitted to using marijuana approximately three times per week from about 1995 to about 2011,<sup>2</sup> although he testified that he stopped use in 2010.<sup>3</sup> He did not report his illegal drug use on his SF 86. In June 2010, he submitted a urinalysis sample at work (Company A) and resigned before the results were reported, knowing it would be a positive test for marijuana. He continued to use marijuana up to two weeks after failing the urinalysis before stopping all further use.<sup>4</sup> Applicant's past drug use, failed urinalysis, and resignation because of a positive test result were not disclosed in his SF 86 for fear of losing his job, but were discussed in his PSI. Applicant continues to associate with at least one friend that uses marijuana.

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(AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replaced the guidelines in Enclosure 2 to the Directive.

<sup>2</sup> GE 2.

<sup>3</sup> Tr. 49.

<sup>4</sup> Tr. 21 - 23.

Applicant holds a commercial driver's license (CDL) which he uses to drive trucks at various jobs, including in his current position.<sup>5</sup> If the licensing authority discovered his drug use, he would lose his license. In order to forestall any potential revocation action, he voluntarily attended an alcohol/drug treatment program in 2010.<sup>6</sup> The course started on June 24 and finished on July 10, 2010. It involved classes made up of mostly DUI offenders, and consisted of watching videos and talking about experience and what to do differently.<sup>7</sup> His positive urinalysis was never reported to the licensing authority, including by Applicant.<sup>8</sup> Applicant did not report his drug treatment on his SF 86, but discussed it during his PSI.

In July 2013, Applicant grabbed his ex-spouse's shirt sleeve and pulled during a confrontation in his home. When contact was broken, she fell against a countertop causing an injury. Although she was not living in the home at the time, he was arrested for assault. She refused to testify, and the charge was dismissed.

Although not alleged in the SOR, additional facts relevant to a trustworthiness determination were developed from Applicant's testimony and the evidence. In 2013, while employed with company B as a Government contractor on a Government installation, Applicant's common access card (CAC) and base access was revoked after being investigated for stealing tools belonging to the Government.<sup>9</sup> He was permitted to resign.

He began his current employment with company C in September 2014. His current employer prohibits illegal drug use,<sup>10</sup> and has likely tested Applicant in a pre-employment test and randomly since. He uses his CDL license to drive trucks for the company.<sup>11</sup> Applicant's supervisor attested to his trustworthiness and reliability while employed, and is unaware of any current drug use. He first learned of Applicant's past drug issues while reviewing the SOR in preparation to testify. Applicant did not disclose his prior drug use to Company C despite being asked to disclose it for the proceeding seven years.<sup>12</sup>

In reference to the Guideline F allegation, Applicant claimed the charged-off debt alleged in the SOR resulted from his ex-spouse opening credit card accounts in his

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<sup>5</sup> Applicant received his CDL license in 1992, and uses it in his current position. Tr. 55-56; 61.

<sup>6</sup> Tr. 25; 51.

<sup>7</sup> Tr. 26; 52.

<sup>8</sup> Tr. 51. GE 2.

<sup>9</sup> Applicant believed or was led to believe the tools were being replaced and discarded. Tr. 29-32.

<sup>10</sup> Tr. 62-63.

<sup>11</sup> Tr. 61.

<sup>12</sup> Tr. 68.

name. No evidence was presented to corroborate that assertion. The debt was charged-off in December 2011.<sup>13</sup> At the hearing, he claimed that he paid other debts, and is currently paying the SOR debt.<sup>14</sup> After the hearing, Applicant submitted a statement from the creditor, dated May 20, 2016, noting a balance due of \$12,755, with a payment due on May 8, 2016. The statement notes the “last payment date” was March 9, 2016, but does not show an amount paid.<sup>15</sup> A receipt for a payment of \$100, presumably made to the creditor on June 1, 2016, was included in evidence.<sup>16</sup>

## **Policies**

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 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, administrative judges apply the guidelines 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.”

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.” The applicant has the ultimate burden of persuasion to obtain a favorable security 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

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<sup>13</sup> AE B.

<sup>14</sup> Tr. 17.

<sup>15</sup> Applicant testified at the hearing that he has made two payments. *See*, Tr. 45.

<sup>16</sup> AE A - C.

the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “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 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 under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has a significant charged-off debt that he was unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. Applicant acknowledged the SOR debt and recently began payments under a payment plan, but there has been little evidence offered to show the financial issue is under control or will be resolved within a reasonable period. The account was charged off in 2011, while Applicant was married. Even if he was unaware of the debt, he had notice since at least November 2014 during his PSI. No payment agreement has been offered into evidence, and there is a scant record of payments. The creditor’s recovery summary (AE B) shows there may have been a payment in March 2016, but that Applicant apparently missed the April and May payment, or made a late payment for these dates in June. The evidence suggests Applicant waited until very recently to address this debt, and that re-payments have not been consistent or timely. He failed to show a reasonable and consistent track record toward resolution of the debt, and this issue continues to cast doubt on his current reliability, trustworthiness, and good judgment. No mitigation under Guideline F is appropriate.

## **Guideline E, Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

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.

The following disqualifying conditions under AG ¶ 16 are relevant in this case:

(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 has a history of purchasing and using marijuana from approximately 1995 to 2010, and tested positive in an employment drug test in 2010. He knowingly and intentionally omitted his past drug use, the true reason for leaving his employment with company A, and his history of drug treatment in his SF 86.

The following mitigating condition under AG ¶ 17 is potentially relevant:

(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.

There is insufficient evidence to suggest Applicant's personal conduct issues have been resolved or are unlikely to reoccur. On the contrary, the evidence shows that Applicant has a history of involvement with marijuana, continues to associate with a drug using friend, was caught in a urinalysis exam, resigned to avoid further implications when the results were returned, and intentionally hid that information from the Government.

His voluntary “counseling” was not requested to aid him in stopping his drug use, but was merely entered into to forestall the potential loss of his CDL license should the licensing authorities discover his positive drug test, which he did not self-report or report to other employers. His attendance at drug treatment was deliberately omitted from his SF 86 in an attempt to hide his drug use altogether. The Applicant’s ulterior motivation to attend drug counseling does not give rise to mitigation for treatment aimed at addressing the problem. Additionally, the facts show a long history of dishonest behavior that has not been mitigated by time or other factors. No mitigation for these issues applies.

Applicant was arrested for assault on his spouse. The Government has not presented evidence to show facts that are contrary to Applicant’s version. The relationship was contentious, and resulted in a divorce. Applicant attempted to prevent his spouse from entering his home, where she was excluded. The contact and scuffle between them was incidental and any injury that may have occurred, appears accidental. There is no evidence that his spouse was seriously injured. Although a spouse’s refusal to testify against her husband may stem from reasons unrelated to the offense, including fear, potential retaliation, etc., there is no evidence to show that this was an intentional act or that Applicant has a propensity toward violence. Applicant is now divorced and further incidents are unlikely to reoccur. AG ¶ 17(c) applies to the arrest incident.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis, but additional comments are warranted.

Applicant has a history of illegal drug use, and has made concerted efforts to hide it when there are potentially negative consequences. His questionable judgment and dishonesty extends beyond the SOR allegations, and includes the loss of his job, CAC card and base access because of an allegation of theft of government property; not reporting his drug use to his CDL licensing authority; and failing to report his drug use to his current employer, who relies on his CDL certification. Although these are not alleged in the SOR, they are relevant to a whole-person analysis of Applicant's honesty and trustworthiness. Overall, the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. I conclude Applicant has not mitigated the financial considerations and personal conduct security concerns except for the arrest alleged in SOR 1.e.

### **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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline F:	Against Applicant
Subparagraph 2.a:	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.

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GREGG A. CERVI  
Administrative Judge