



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



In the matter of:

Applicant for Security Clearance

)  
)  
)  
)  
)

ISCR Case No. 15-06800

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

05/30/2017

---

**Decision**

---

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline H, drug involvement. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On April 11, 2016, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline H, drug involvement. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on May 3, 2016, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of

relevant material (FORM). The FORM was mailed to Applicant, and it was received on June 8, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not provide a response or documents within that time period. The Government's evidence identified as Items 2 through 8 are admitted into evidence without objection. The case was assigned to me on May 3, 2016.

### **Procedural Matter**

Department Counsel amended the SOR in the FORM in accordance with the record evidence by adding SOR ¶ 1.k. It reads:

You are indebted on a Federal Tax Lien filed against you in October 2015, in the approximate amount of \$17,109. As of the date of this File of Relevant material, the account remains delinquent.

Applicant acknowledged receipt of the FORM. He did not respond to the FORM and did not admit or deny this debt. His failure to respond will be considered a denial.

### **Findings of Fact**

Applicant admitted all of the allegations in SOR, except ¶¶ 1.d, 1.i, and 1.k. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 51 years old. He was married from 2008 to 2010. He has been in a cohabitant relationship since 2010. Applicant has children ages 33, 25, and 19. He began employment with a federal contractor in 2014. Applicant had periods of unemployment and short-term employment before then.<sup>1</sup>

All of the debts alleged in the SOR are supported by credit reports from March 2016, March 2015, and September 2014. The drug involvement activity is supported by Applicant's admissions in his security clearance application (SCA), his interview with a government investigator, and an FBI identification record from September 2014.<sup>2</sup>

Applicant admitted he failed to file his 2009 and 2010 state income tax returns. In his September 2014 background interview with a government investigator, he stated he was in the process of filing his delinquent state tax returns. Applicant did not provide evidence that he filed the returns. Applicant is indebted to the Internal Revenue Service (IRS) for delinquent federal taxes for tax years 2009 and 2010 (SOR ¶ 1.b-\$6,000). He told the investigator that he provided the IRS with paperwork in 2014 to setup a payment plan. He did not provide evidence of the payment plan or payments made.

---

<sup>1</sup> Item 3.

<sup>2</sup> Items 2, 3, 4, 5, 6, 7, 8.

Applicant's most recent credit report from March 2016, reflects a federal tax lien in the amount of \$17,109 that was filed in October 2015 (SOR ¶ 1.k).<sup>3</sup>

Applicant stated that he disputed the debts in SOR ¶¶ 1.d and 1.i. He did not provide evidence of his actions to dispute these debts or the basis of the disputes. The debt in SOR ¶ 1.f is for delinquent child support payments. Applicant stated in his answer that he was making payments on the debt, but did not provide documentary proof. Applicant admitted the remaining SOR debts, but did not provide any information or documents of his actions to pay or resolve the debts.<sup>4</sup>

Applicant admitted that from approximately 1985 to 2013, he used marijuana on various occasions. He admitted he illegally used the prescription drug Xanax from approximately 2009 to 2014. He obtained the drug from his mother and used it about once or twice a month when he was nervous or anxious. He indicated on his security clearance application that he did not intend to use this drug in the future.<sup>5</sup>

In approximately July 1987, Applicant was charged and convicted of possession of a Class D controlled substance. In approximately August 1988, he was charged with possession of a Class D controlled substance. There is insufficient evidence of the disposition of the charge. In approximately May 1994, he was charged with possession of a Class D controlled substance and violated the terms of a previously imposed probation period. In approximately June 1996, Applicant was charged with possession of a Class D controlled substance (marijuana). He was convicted of the offense. In approximately June 2004, he was charged with possession of a Class D controlled substance (marijuana). Applicant told the government investigator that he went to court, pled guilty to the offense, was fined, placed on two years probation, and was required to attend a drug education class. In approximately June 2008, he was charged with possession of a Class D controlled substance. He was convicted of the offense and placed on probation for two years. He attended court-ordered drug counseling in 2008. No other information was provided by Applicant regarding his drug use and possession.<sup>6</sup>

## **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 used in evaluating an applicant's eligibility for access to classified information.

---

<sup>3</sup> Items 2, 3, 4.

<sup>4</sup> Items 2, 4.

<sup>5</sup> Items 2, 3, 4.

<sup>6</sup> Items 2, 3, 4, 5.

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 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." 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 the possible risk that an applicant may deliberately or inadvertently fail to 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.

Section 7 of EO 10865 provides that 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 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 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.<sup>7</sup>

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to timely file his 2009 and 2010 state tax returns and failed to pay federal taxes for 2009 and 2010. He has an unpaid \$17,190 federal tax lien from October 2015, and owes numerous other delinquent debts. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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;

---

<sup>7</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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; 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 the actions to resolve the issue.

Applicant did not provide any evidence of efforts to pay, resolve, or dispute any of his delinquent debts. He did not provide an explanation for failing to timely file his 2009 and 2010 state tax returns. He did not provide documents to show the delinquent state tax returns have been filed, or that he has a payment plan to resolve the October 2015 federal tax lien. Although he listed on his SCA and during his interview that he had periods of unemployment, he did not offer any specific evidence that the accumulation of his debts was beyond his control or any actions he has taken to responsibly address them or prove that his financial problems are under control. Applicant's delinquent debts total more than \$32,700. None of the above mitigating conditions are applicable.

#### **Guideline H, Drug Involvement**

AG ¶ 24 expresses the security concern for drug involvement:

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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

(a) any drug abuse; and

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant illegally used marijuana on various occasions from 1985 to 2013. He illegally used the prescription drug Xanax on various occasions from approximately 2009 to 2013. Applicant was charged and convicted in 2008, 2004, and 1996 with possession of a class D controlled substance, marijuana. I find the above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. The following are potentially applicable:

- (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 has a long history of illegal drugs use and misuse of a drug that was not prescribed to him. He was repeatedly arrested and charged with possession of marijuana. His use and possession were not infrequent and did not happen under unusual circumstances. Applicant did not present evidence that he no longer associates with drug-using contacts, or that he has changed his environment where drugs are used. He did indicate that he did not intend to misuse the prescription drug in the future. Applicant attended a court-ordered drug program, but there is no evidence as to whether he received a diagnosis or a prognosis. Insufficient evidence was provided to conclude Applicant has been rehabilitated. The above mitigating conditions do not apply.

### **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 the 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 H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under these guidelines, but some warrant additional comment.

Applicant is 51 years old. He has approximately \$32,700 of delinquent debts, including a \$17,190 unpaid federal tax lien. He did not provide proof that he has filed his delinquent state tax returns or paid any of the debts. He has a history of illegal drug use and possession. Applicant failed to provide mitigating evidence regarding these security concerns. He has failed to meet his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations, and Guideline H, drug involvement.

### **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 F:	AGAINST APPLICANT
Subparagraphs 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.k:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a-2.e:	Against Applicant
Subparagraphs 2.g-2.h:	For 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Carol G. Ricciardello  
Administrative Judge