



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



In the matter of: )  
 )  
 ) ISCR Case No. 16-02583  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2018  
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**Decision**  
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NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Although Applicant mitigated the personal conduct concerns, he failed to mitigate the financial considerations concerns associated with his \$10,700 in unpaid delinquent debt. Clearance is denied.

**Statement of the Case**

On September 29, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the personal conduct and financial considerations guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke Applicant's security clearance.

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<sup>1</sup> The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant timely answered the SOR and requested a hearing.<sup>2</sup> At the hearing, convened on January 9, 2018, I admitted Government's Exhibits (GE) 1 through 6, without objection. Applicant did not offer any documents. I received the transcript (Tr.) on January 12, 2018. The record remained open after the hearing to allow Applicant to submit additional documentation. Applicant did not submit anything by the February 9, 2018 deadline.

## **Procedural Matters**

### **Implementation of Revised Adjudicative Guidelines**

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded those implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have decided this case under the 2017 AG.

## **Findings of Fact**

Applicant, 33, works as a telecommunications specialist for a federal contractor. He was initially granted access to classified information when he served in the U.S. Army from August 2002 to December 2012. Applicant completed his most recent security clearance application in October 2015 in connection with his current employment. He disclosed derogatory information regarding past illegal drug use and his finances. The ensuing investigation revealed additional criminal incidents and more delinquent accounts.<sup>3</sup>

Applicant enlisted in the Army in August 2002 when he was 18 years old. In 2004, he was arrested for driving under the influence of alcohol. Although his blood-alcohol level was under the legal limit, Applicant was under the legal drinking age. He pleaded guilty and successfully completed the terms of his deferred adjudication program.<sup>4</sup>

In 2006, Applicant married his girlfriend of six months after learning she was pregnant. In January 2007, the newly married couple moved overseas to Applicant's new duty station. The couple began experiencing marital problems immediately. Applicant's wife did not adjust well to the military lifestyle or being so far away from home. Their relationship grew contentious and Applicant became depressed. In 2009,

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<sup>2</sup> Department Counsel provided discovery to Applicant on December 29, 2016.

<sup>3</sup> GE 1.

<sup>4</sup> Tr. 19-20; GE 1.

Applicant admits that he used cocaine while at a party. He testified that he used the drug to self-medicate his depressive feelings.<sup>5</sup>

In an effort to rehabilitate his marriage, Applicant elected a duty station in his wife's hometown. However, when they returned to the United States, the marriage did not improve and Applicant's depressive mood continued. Between 2010 and 2012, Applicant tried a number of anti-depressants, but stopped taking them because he did not like the side effects. In 2012, Applicant began using the synthetic cannabinoid, Spice, which he believed would mimic the calming side effects of marijuana and alleviate his depression and stress. In June 2012, Applicant was arrested at his home for suspicion of driving under the influence of alcohol. Incident to the arrest, the police found Spice on Applicant's person and in a storage closet on his porch. According to the report of investigation, ". . . [Applicant] was interviewed and denied smoking Spice. A subsequent urinalysis confirmed [Applicant] has used Spice." At hearing, Applicant explained that he denied using Spice the day of his arrest. The record does not include either the investigating officer's or Applicant's statements contemporaneous to the incident. Based on the investigation, Applicant was charged with failure to obey a general order and wrongful use and possession of a controlled substance (synthetic cannabinoids). Because of these charges, he was discharged from the Army, receiving a general discharge under honorable conditions.<sup>6</sup>

Applicant and his wife divorced in December 2013. Between 2013 and 2016, Applicant was also cited for three traffic infractions. He pleaded guilty to charges of speeding (nine miles over the posted speed limit) in October 2014 and November 2015. In June 2016, he was cited for driving on a suspended license and failure to change his address within 30 days of moving to a new jurisdiction. Applicant explained that his license was suspended because of an erroneous reporting from another state that Applicant failed to pay a speeding ticket.<sup>7</sup>

After his divorce, Applicant's finances became his primary stressor. In the two years after his discharge from the Army, Applicant experienced periods of unemployment and underemployment that made it difficult to keep up with his financial obligations. He fell behind on his child support, culminating in an arrest. He was evicted from his apartment. Over the course of those two years, Applicant incurred the \$10,700 in delinquent debt alleged in the SOR in addition to other unalleged personal debt. In 2015, Applicant did not have federal or state income taxes withheld from his pay, resulting in an \$800 federal tax liability and a \$5,000 state income tax liability. Applicant testified that his finances and depressive mood improved when he accepted his current job. Now earning over \$70,000 annually, he has money to repay his debts. He claims to have paid the debts alleged in SOR ¶¶ 1.a, 1.e, 1.f, 1.i, 1.j, and 1.k. He also claims to have resolved other unalleged debts, including a \$3,000 personal loan to his former employer, and his federal and state income tax liabilities. However, Applicant did not

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<sup>5</sup> Tr. 20-23, 37.

<sup>6</sup> GE 23-29, 37-43, 55-56; GE 3.

<sup>7</sup> Tr. 46-47; GE 6.

provide corroborating evidence of these payments. He has not received any financial counseling.<sup>8</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 AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an Applicant's eligibility for access to classified information.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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 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 the possible risk the applicant may deliberately or inadvertently fail to protect 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 Executive Order 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**

### **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 cooperate or provide truthful answers during national security investigative or adjudicative process. The record establishes the Government's *prima facie* case under personal conduct guidelines.<sup>9</sup>

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<sup>8</sup> Tr. 29-36, 43-45, 51-52, 56; GE 4.

<sup>9</sup> AG ¶ 15.

The SOR alleges adverse information in several adjudicative areas: criminal conduct; drug involvement and substance misuse; and personal conduct. He was arrested and convicted of DUI in 2004 and in 2012 was charged with drug-related crimes that resulted in his separation from the Army. Applicant used illegal drugs in 2009 and 2012 while serving on active duty in the military and holding a security clearance. During the 2012 Army investigation, Applicant intentionally lied about his use of synthetic cannabinoids. Between 2013 and 2016, he was cited for three traffic infractions. Given the age of the criminal conduct, drug use, and the falsification, and the minor nature of the traffic citations, none of the alleged conduct is sufficient for an adverse determination under any other single guideline. However, when it is considered as a whole, Applicant's conduct supports a negative whole-person assessment of Applicant's judgment, reliability, trustworthiness, and willingness to comply with rules and regulations that suggest he may not properly safeguard classified or sensitive information.<sup>10</sup>

However, these concerns are mitigated by the passage of time. Applicant's misconduct occurred during the years when he was in a difficult marriage. He was young, immature, and did not have the skills to cope with the depression and stress in his personal life and behaved inappropriately. However, since his 2013 divorce, there is no indication that Applicant has engaged in similar conduct.<sup>11</sup>

## **Financial Considerations**

While the personal conduct concerns are mitigated, the financial considerations concerns remain. The SOR alleges that Applicant is indebted to nine creditors for \$10,700. Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or willingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.<sup>12</sup> The record supports a finding that Applicant has a history of not meeting his financial obligations and an inability to satisfy his debts.<sup>13</sup>

Applicant's financial problems became acute after his discharge from the military. Because his discharge and subsequent periods of unemployment and underemployment were caused by his criminal conduct, it cannot be said the financial problems were caused by events beyond his control. Although Applicant claims that he has resolved several SOR and non-SOR debts, he did not provide evidence of his good-faith efforts to repay his creditors. He also has continued to incur delinquent debts, specifically federal and state tax debt that remains unresolved. Applicant did not provide any evidence to establish that his finances are under control.

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<sup>10</sup> AG ¶ 16 (a).

<sup>11</sup> AG ¶ 17(c).

<sup>12</sup> AG ¶ 18.

<sup>13</sup> AG ¶¶ 19(a) and (c).

## **Whole-Person Concept**

Based on the record, I have significant reservations about Applicant's current security worthiness. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Applicant has failed to mitigate the security concern raised by his history delinquent debts. Because Applicant has not demonstrated a clear track record of rehabilitation or reform, it is not appropriate to grant him access to classified information at this time.

## **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, Personal Conduct:	FOR APPLICANT
Subparagraphs 1.a – 1.h:	For Applicant
Paragraph 2, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 2.a – 2.k:	Against Applicant

## **Conclusion**

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

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Nichole L. Noel  
Administrative Judge