



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-01192  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

08/15/2018

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**Decision**

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GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the criminal conduct and financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 6, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J (criminal conduct) and F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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 (AG) implemented by DOD on June 8, 2017.<sup>1</sup>

Applicant responded to the SOR on July 27, 2017, and requested a hearing before an administrative judge. The case was assigned to me on February 14, 2018. On March 5, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of

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<sup>1</sup> However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

hearing (NOH) scheduling the hearing for March 12, 2018. I convened the hearing as scheduled.

Applicant waived the 15-day hearing notice as required by the Directive.<sup>2</sup> I marked the Government's and Applicant's lists of exhibits as Hearing Exhibits (HE) I and II. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified, called two witnesses, and submitted Applicant's Exhibits (AE) A through P, which were admitted in evidence without objection.

At Applicant's request and with no objection from Department Counsel (DC), I left the record open until March 26, 2018. Applicant timely provided additional documentation, which I marked as AE Q through T and admitted in evidence without objection. I appended to the record collectively as HE III, Applicant's list of supplemental exhibits and an email from DC indicating she did not have any objection. DOHA received the hearing transcript (Tr.) on March 22, 2018.

### **Findings of Fact**

In response to the SOR, Applicant admitted the allegation in ¶ 1.a and denied the remaining SOR allegations in ¶¶ 2.a through 2.j. He is 39 years old. He married in 2000, divorced in 2003, and remarried in October 2016. He has three children: an adult child from his previous marriage, a minor child from a previous relationship, and a minor child from his current marriage.<sup>3</sup>

Applicant graduated from high school in 1998. He attended college in 2004 and again since 2014, but he had not yet earned a degree. He served in the U.S. military for 14 years, from September 1998 until he was honorably discharged in December 2011. During this period, he was deployed four times, once to Kuwait and three times to Iraq. After his military discharge, he was unemployed until the end of 2012, when he began working for his current employer, a defense contractor. In 2015, he was promoted to lead network engineer. He was pulled from the lead position when his interim security clearance was withdrawn after the issuance of the SOR. He held a DOD security clearance from 1998 to 2011.<sup>4</sup>

In January 2011, Applicant was arrested and charged with misdemeanor simple assault, recklessly endangering another person, and endangering welfare of children (SOR ¶ 1.a). Applicant testified that in September 2010, he spanked his then-girlfriend's four-year-old child on her buttocks because she was misbehaving. He denied striking her on the face. His then-girlfriend was not present in the home when the incident occurred, but both he and the child notified her about it when she returned. The child was not taken to the hospital. Approximately two months later, after he and his then-girlfriend ended their relationship, she filed charges against him. She claimed that he

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<sup>2</sup> Tr. at 6; Directive, E3.1.8.

<sup>3</sup> Response to the SOR; Tr. at 29, 33-35, 37, 41, 57, 91-92; GE 1, 4, 5; AE I.

<sup>4</sup> Tr. at 6-7, 22-33, 35-37, 43, 57-58, 92-94; GE 1, 4, 5; AE J, K, L.

had inflicted the “[b]lack eye and a scratch” on her daughter’s face from that day. He denied her claim. He indicated that her child was also playing with his rottweiler that day, and the rottweiler caused those injuries to the child.<sup>5</sup>

Applicant pled guilty to simple assault in June 2013. The remaining charges were nolle prossed. On the advice of his attorney, he chose to plead guilty because he was prevented from seeing his child while the criminal proceeding against him was pending. He was sentenced to probation for five years, ordered to attend anger-management and parenting classes, and fined. He was scheduled to complete probation in June 2018. He did not have any probation violations. He completed the parenting class in February 2017. He completed a one-on-one anger-management class at a community college over six weekends, at three hours each weekend, in April 2017.<sup>6</sup>

The SOR also alleged that Applicant had eight delinquent consumer accounts for \$7,448 and two delinquent medical accounts for \$910 (SOR ¶¶ 2.a - 2.j). The debts were reported on his October 2015 and October 2016 credit reports. He indicated during his 2012 and 2016 background interviews that he was unaware of his delinquent debts until the investigators informed him about them.<sup>7</sup>

Applicant attributed his delinquent debts to his one-year period of unemployment after his military discharge in December 2011. He went from earning \$48,000 annually to working odd jobs for minimal pay and receiving \$700 monthly in unemployment benefits. In addition, he incurred \$27,000 in legal fees for an attorney to represent him in the 2011 criminal proceedings. He paid the fees through a monthly installment plan that he completed between 2015 and 2016. In 2012, he was also ordered to pay interim child support of \$350 monthly for his one child from his previous marriage. That amount was later increased to \$400 monthly for his two children. Also in 2012, he short sold the home that he purchased in 2010. He acknowledged that he also mismanaged his finances due to his immaturity.<sup>8</sup>

Applicant provided documentation to corroborate his claims that he paid or otherwise resolved all of the SOR debts. He paid all but SOR ¶¶ 2.c, 2.d, 2.g, and 2.h between May and June 2017, after he received the SOR. He believed SOR ¶ 2.c was for an insufficient funds fee on a returned check he wrote to a state child support agency in 2014. He testified that he was current on his child-support payments of \$350 monthly for his one child from his previous marriage that is still a minor, and that monthly payment is automatically withdrawn from his pay. He testified that he believed he resolved SOR ¶ 2.d because when he contacted the creditor, he was told that they could not locate any account in his name. He also indicated that it was not reported on his recent credit reports. The IRS issued a Form 1099-C canceling SOR ¶ 2.g in

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<sup>5</sup> Tr. at 38, 42-44, 59-72, 84-91; GE 1, 2, 3, 4, 5; AE S.

<sup>6</sup> Tr. at 38, 42-44, 59-72, 84-91, 98-99; GE 1, 3, 4, 5; AE A, Q, S.

<sup>7</sup> GE 6, 7.

<sup>8</sup> Tr. at 35, 40-54, 72-84, 95-96; GE 1, 2, 4, 5.

October 2010, before the issuance of the SOR; it was not reported on his 2016 credit report. He provided a letter from the creditor for SOR ¶ 2.h indicating that they could not locate an account in his name; it was also not reported on his 2016 credit report.<sup>9</sup>

Applicant testified that he has matured since the criminal incident and the period in which he incurred delinquent debts. In 2010, he received an Article 15 under the Uniform Code of Military Justice for tardiness due to missing three formations. He also received an Article 15 for larceny of government funds after he forged a signature on his roommate's check for \$100. He had no other criminal incidents. His wife was aware of the 2010 incident and the consequent arrest, charges, and conviction.<sup>10</sup>

Applicant's wife manages their finances. They received financial counseling, and the service assisted them with putting together a budget. He checks his credit report daily. He earned \$58,000 annually as of the date of the hearing. His wife worked as a manager. They opened a 401(k) retirement savings plan, and they saved \$2,700 as of the date of the hearing. They had \$300 in a savings account. They were current on their expenses, to include the mortgage for their home that they purchased in 2015. Their monthly net remainder after expenses was \$2,705. Aside from the SOR debts, Applicant was disputing a \$775 debt with a university, because he believed he was charged for a course in which he did not enroll. He was also paying a \$675 medical debt through a \$200 monthly payment plan. He did not have any other delinquent debts.<sup>11</sup>

Applicant received numerous decorations, medals, and citations. Included among them are the Army Commendation Medal for his deployment to Kuwait. He also received three Army Achievement Medals and four Army Good Conduct Medals. He comes from a family who have served in the U.S. military.<sup>12</sup>

Applicant's first witness was a friend of seven years. He worked as a police officer for 13 years. He held a security clearance for two years with another government agency. Their families socialized once to twice weekly. Though he was unaware of the specific SOR allegations prior to the hearing date, he was made aware of Applicant's indebtedness and simple assault charge at the hearing. The witness testified that he had never observed Applicant strike any children. He entrusted his two minor children with Applicant, and they considered Applicant their uncle. There was nothing about Applicant's spending habits that caused him concern. He testified that Applicant's past issued did not affect his perception of Applicant, as he believed that Applicant made mistakes when he was younger and learned from them as he matured. He described Applicant as an honest person.<sup>13</sup>

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<sup>9</sup> Tr. at 44-54, 72-84, 94-97; GE 4, 5, 6, 7; AE B, C, D, E, F, M, N, R, T.

<sup>10</sup> Tr. at 38, 42-44, 59-72, 84-91, 98-99; GE 1, 3, 4, 5; AE A, Q, S.

<sup>11</sup> Tr. at 35, 40-43, 53-54, 72-84, 95-97; GE 4, 6, 7; AE G, H, I, O.

<sup>12</sup> Tr. at 35-37, 54-58; AE I, J, K.

<sup>13</sup> Tr. at 12-22.

The second witness was an owner, vice president, and the assistant facility security officer (FSO) of Applicant's current defense contractor. He was also Applicant's direct supervisor since 2015. He interacted with Applicant between one and five times weekly. He held a security clearance for roughly eight years as of the date of the hearing. He was generally aware of the SOR concerns, in that he understood Applicant had delinquent debts and an incident for which he served probation. He praised Applicant's work performance, and described him as one who "[w]orks very well under stress, very well with low direction." He indicated that Applicant was entrusted with the company's corporate credit card, without incident. He attested to Applicant's trustworthiness. Other character references, to include close friends and coworkers, also attested to his trustworthiness, ability to abide by rules and regulations, honesty, and reliability.<sup>14</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(a), 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 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 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>14</sup> Tr. at 22-33; AE L, P.

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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and

(c) individual is currently on parole or probation.

Applicant was arrested and charged with misdemeanor simple assault, recklessly endangering another person, and endangering welfare of children in January 2011. He pled guilty to simple assault in June 2013, and he was on probation until June 2018. AG ¶¶ 31(b) and 31(c) are established for SOR ¶ 1.a.

I have considered all of the mitigating conditions under AG ¶ 32 and considered the following relevant:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher

education, good employment record, or constructive community involvement.

The 2011 incident was an isolated one. It happened under such unusual circumstances that are unlikely to recur, and it does not cast doubt on Applicant's current reliability, trustworthiness, and good judgment. He completed the court-ordered parenting and anger-management classes. He had no probation violations. He was scheduled to complete probation in June 2018. Since 2012, he has established a good employment record with his current defense contractor. AG ¶¶ 32(a) and 32(d) apply.

## **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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 to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was unable to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions for SOR ¶¶ 2.a to 2.j.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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, a death, divorce or separation,

clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

While conditions beyond his control contributed to his financial problems, Applicant acknowledged that he mismanaged his finances due to his immaturity. For the full application of AG ¶ 20(b), Applicant must also provide evidence that he acted responsibly under the circumstances. He provided corroborating documentation of his efforts to pay or otherwise resolve the SOR debts. SOR ¶ 2.g was canceled by the IRS before the issuance of the SOR. He paid all but SOR ¶¶ 2.c, 2.d, 2.g, and 2.h between May and June 2017. He testified that he was current on his child-support obligation underlying SOR ¶ 2.c. The creditor for SOR ¶¶ 2.d and 2.h could not locate accounts in his name, SOR ¶ 2.h is not reported on his 2016 credit report, and Applicant indicated that SOR ¶ 2.d is also not reported on his recent credit reports. His ability to resolve his debts sooner was hampered by the conditions beyond his control, as previously discussed. AG ¶ 20(b) is partially applicable.

Applicant and his wife received financial counseling, through which they compiled a budget. His finances are under control. He made a good-faith effort to pay or resolve his debts. There is sufficient evidence to conclude that his financial problems are unlikely to recur, and they do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 J and F in my whole-person analysis.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did mitigated the criminal conduct and financial considerations security concerns.

### **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 J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a - 2.j:	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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge