



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



In the matter of: )  
)  
) ISCR Case No. 17-03321  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

06/13/2018  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct, and Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 22, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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 (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 7, 2017, and requested a hearing before an administrative judge. The case was assigned to me on January 10, 2018. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 29, 2018. I convened the hearing as scheduled on April 18, 2018. The Government offered exhibits (GE) 1 through 9. There were no objections to the Government's exhibits, and they were admitted into evidence. Applicant testified and did not offer any exhibits. DOHA received the hearing transcript on April 26, 2018.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 62 years old. He immigrated to the United States in 1977 and became a naturalized citizen in 1987. He married in 1979 and divorced in 1984. He remarried in 1995 and divorced in 2013. He has one adult child from the marriage. He earned an associate's degree in 1988. In the past, Applicant has worked for government contractors, and held a security clearance. Applicant has a job pending the determination of his security clearance eligibility.<sup>1</sup>

In August 2014, Applicant was terminated from his job with a government contractor. Since then he has been self-employed or worked odd jobs. Applicant disputed that he did anything wrong to be terminated. He was working at a secure remote military site for a government contractor and was accused of making statements about consuming and smuggling cocaine. His statements were overheard by two soldiers. They also heard detailed information about the procedure Applicant allegedly used to smuggle the drugs onto the base. The soldiers reported the information to government officials who conducted an investigation. As part of the investigation, an undercover operation was conducted where a soldier attempted to purchase drugs from Applicant on three different occasions. No transactions took place. Applicant did not report to government officials that three times a soldier attempted to purchase drugs from him. He testified that he should have made a report.<sup>2</sup>

Applicant denied he made the statements about using and smuggling drugs to the soldiers. He then said his statements were made jokingly. He said there were three soldiers who were witnesses to the conversation. Applicant did not provide investigators with the names of witnesses who could corroborate his statements that he was joking. His explanation for not providing investigators with the names of the people he was joking with was that he was never asked. He gave a handwritten statement to the investigators that says: "I was bragging and joking, something about white stuff and watching Scarface, joking and talking about cocaine and parties."<sup>3</sup> Applicant testified that he does not know

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<sup>1</sup> Tr. 9, 21-24.

<sup>2</sup> Tr. 24-25, 46-50; GE 7, 8.

<sup>3</sup> Tr. 38-40; 42-45; GE 7, 8.

what the word “bragging” means. He said he was told by the investigators what to write.<sup>4</sup> Applicant’s testimony was not credible.

Applicant was interviewed as part of his background investigation by a government investigator in March 2017. He told the investigator that the allegations made against him were out of spite because he was not friendly with one of the people who heard him joking. He told the investigator that he could not recall the names of the persons involved. When asked by Department Counsel if he understood that joking about cocaine at the secure remote military site where he was working might be problematic, he answered “I did not know.” He had been working at the site for two and a half years.<sup>5</sup>

A letter from Applicant’s former employer from September 2014 states Applicant was an employee who worked and lived on an overseas military installation and was released for misconduct.<sup>6</sup> An entry was made about Applicant in August 2014 in the Joint Personnel Adjudication System that reported an investigation was being conducted regarding alleged criminal activity, but regardless of the outcome Applicant’s conduct was unprofessional and inexcusable and not in accordance with the protection of classified information. It noted that Applicant had conversations with personnel about drug use, drug smuggling, and other intolerable and incompatible subjects. It was determined that Applicant was not suitable for work at the location or to have access to classified information.<sup>7</sup> Applicant denied he did anything wrong. He testified he is a victim and a soldier who hated him because he believed Applicant was involved with his girlfriend was responsible for the investigation.<sup>8</sup>

Applicant testified he incurred the debts alleged in the SOR after he lost his job in 2014. He made minimum payments until approximately August 2015. He used credit cards to supplement his income. He was unable to pay them and none of the debts alleged in the SOR are resolved. He testified if he gets a job, he intends to pay the delinquent debts. The debts total approximately \$46,614. The debts are supported by Applicant’s admissions and credit reports from September 2016 and September 2017.<sup>9</sup>

## **Policies**

When evaluating an applicant’s national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating

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<sup>4</sup> Tr. 38-39.

<sup>5</sup> Tr. 38-40; GE 2, 7, 8.

<sup>6</sup> GE 9.

<sup>7</sup> GE 6.

<sup>8</sup> Tr. 25.

<sup>9</sup> TR. 29, 32-34; GE 4, 5.

conditions, which are 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, 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 national security eligibility will be resolved in favor of the 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. Directive ¶ E3.1.15 states 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 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts that he is unable or unwilling to pay since 2015. 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:

- (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.

None of Applicant's delinquent debts are resolved. Applicant was terminated from his job in 2014 for misconduct. After exhausting his savings, he used credit to supplement his income. He is unable to pay the delinquent debts. His debts are recent. AG ¶ 20(a) does not apply. Applicant attributed his financial problems to unemployment. His termination was caused by his misconduct, which was not beyond his control. He accumulated the debt knowing he did not have a reliable job and used credit to supplement his income. This was not beyond his control. None of the debts are being resolved. There is no evidence of financial counseling. AG ¶¶ 20(b), 20(c), 20(d) do not apply.

### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for 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 provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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 individual may not properly safeguard classified or sensitive information.

I have considered all of the evidence and conclude that Applicant was terminated from employment after an investigation, which determined he was discussing with soldiers his drug use and ability to smuggle drugs into a secure military base. Although, he claimed he was joking, he failed to provide investigators with the names of witnesses who would corroborate his claim. Applicant's testimony was not credible. The above disqualifying condition applies.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

(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; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant denied any wrongdoing, yet failed to provide to investigators the names of witnesses he said could corroborate his version of what happened. His conduct while working on a secure military base is serious. A government investigation was conducted. Applicant first denied then admitted his statements, but said he was joking. None of the mitigating conditions 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(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 F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 62 years old. He was terminated from his employment because of statements he made while serving at a secure military base. His explanations were not credible. He used credit to supplement his income knowing he did not have a reliable job. He has not paid or made payment arrangements for any of the debts alleged in the SOR. The record evidence leaves me with 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 Guideline E, personal conduct, and Guideline F, 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 E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a-2.j:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge