



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



In the matter of: )  
)  
) ISCR Case No. 17-04064  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

08/30/2018

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his continued eligibility for a security clearance. Although the personal conduct concerns are resolved in Applicant's favor, he failed to mitigate the security concerns raised by his history of financial problems, unresolved delinquent accounts, and illegal use of marijuana in 2017. Applicant's access to classified information is denied.

**Statement of the Case**

On December 21, 2017, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations, drug involvement and substance misuse, and personal conduct guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended his case be submitted to an administrative judge for consideration.

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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 June 8, 2017.

Applicant answered the SOR and requested a decision without a hearing.<sup>2</sup> The Government submitted its written case on March 13, 2018. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on March 20, 2018, and indicated that he did not have anything further he wished to submit for consideration. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 9, without objection.

### **Findings of Fact**

Applicant, 58, has worked for his current employer since June 2013. After suffering a work-related injury in August 2016, Applicant has been unable to work. Applicant receives some disability income. He is currently involved in litigation against his employer over his injury.<sup>3</sup>

Applicant was previously granted access to classified information sometime during his service in the U.S. Coast Guard between 1979 and 1988. He completed his most recent security clearance application in December 2016, disclosing a now-resolved child support arrearage and a \$13,712 deficiency balance for a voluntary vehicle repossession (SOR ¶ 1.c) that the creditor charged off in January 2013. Applicant does not believe he is responsible for the deficiency balance because the car unexpectedly stopped working. He has not provided any evidence that he initiated a formal dispute with the creditor, only that he has chosen not to pay it. Applicant indicated that he will pay the debt if it is necessary to obtain a security clearance.<sup>4</sup>

In addition to the disclosures on his security clearance application, the background investigation revealed three additional delinquent accounts: a \$19,328 line of credit charged off in January 2013 (SOR ¶ 1.b); a \$10,159 credit card account that Applicant stopped paying in November 2012 and was sent to collection in February 2017 (SOR ¶ 1.d); and a \$211 collection account (SOR ¶ 1.e). The investigation also revealed that Applicant filed for Chapter 13 bankruptcy protection in November 2012 (SOR ¶ 1.a). During his May 2017 background interview, Applicant admitted that after he completed his security clearance application, he used marijuana in February and March 2017 (SOR ¶ 2.a), to help relieve the pain from his work-related injury. Although medical marijuana is legal in Applicant's state of residency, he did not follow the procedures for obtaining the drug from a state-licensed dispensary. Instead, he obtained the drug illegally from a casual acquaintance. Applicant did not like the side effects of the drug and decided not to use it again in the future. The record does not contain any other evidence of illegal drug use.<sup>5</sup>

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<sup>2</sup> GE 2-3.

<sup>3</sup> GE 4, 9.

<sup>4</sup> GE 4.

<sup>5</sup> GE 3, 5-6. 7, 9.

Applicant blames his financial problems on his inability to work since his August 2016 work-related injury. His sources of income are short-term disability pay, which Applicant states is 5% of his full salary, and money he earns doing odd jobs. While he earns enough to pay his rent and other living expenses, he does have enough income to pay his creditors. However, it appears that Applicant had financial problems well before his 2016 injury. Applicant first filed for bankruptcy in April 1998 and his debts were discharged in July 1998. In November 2012, Applicant filed for Chapter 13 bankruptcy protection, seeking relief from \$ 70,000 in debt. The court dismissed the petition in March 2013 after Applicant failed to appear for the creditors meeting. Applicant did not list the 2012 bankruptcy petition on his security clearance application because he did not think he needed to do so. To date, all of the debts alleged in the SOR remain unresolved.<sup>6</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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. 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.

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.

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).

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<sup>6</sup> Tr. 7, 9.

## Analysis

### Financial Considerations

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>7</sup>

The record supports a *prima facie* case that Applicant has a history of not meeting his financial obligations and that he has demonstrated an inability to pay his debts.<sup>8</sup> Applicant's current financial problems were caused by an event beyond his control, a work-related injury that has left him unable to work; however, this is not enough to mitigate the financial considerations concerns. Applicant's financial problems are not isolated to the nearly two years he has been receiving reduced income. He has a history of financial problems dating back almost 20 years. He stopped paying the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.d, totaling \$ \$43,000, in approximately 2012, when he filed for bankruptcy protection. He did not explain why he stopped paying his creditors or why he failed to formally dispute the deficiency balance on the voluntary car repossession with the creditor. Ultimately, Applicant failed to meet his burdens of persuasion and production regarding his financial history.

### Drug Involvement and Substance Abuse

The illegal use of controlled substances can raise questions about an individual's reliability and trustworthiness, because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.<sup>9</sup> Applicant's admissions of marijuana use in March and February 2017 establish a *prima facie* case that he engaged in substance misuse, which is disqualifying.<sup>10</sup> While Applicant may have had a legitimate medical reason for using marijuana, he chose to bypass his state's regulated process and obtained the drug illegally. This disregard of the law reflects negatively on Applicant's security worthiness. Although he stated his intent not to use illegal drugs in the future, this does not mitigate the concerns raised by his deliberate decision to procure the drug outside of the legal process. None of the available mitigating conditions apply.

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<sup>7</sup> AG ¶ 18.

<sup>8</sup> AG ¶¶ 19(a) and (c).

<sup>9</sup> See, AG ¶ 24.

<sup>10</sup> AG ¶ 25(a).

## **Personal Conduct**

The SOR cross-alleges the financial considerations concerns and the drug involvement concerns under the person conduct guideline. However, the underlying debt and illegal drug use is sufficient for disqualification under the respective guidelines as detailed above. Accordingly, the personal conduct allegations are cumulative and are resolved in Applicant's favor.

Based on the record, doubts remain about Applicant's ongoing suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Applicant failed to meet his burden of production and persuasion to refute or mitigate the SOR allegations. Applicant did not provide any evidence to show financial rehabilitation or reform. Furthermore, he engaged in behavior that showed a disregard of laws, rules and regulations.

## **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, Financial Considerations:	AGANST APPLICANT
Subparagraphs 1.a – 1.e:	Against Applicant
Paragraph 2, Drug Involvement and Substance Misuse	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Personal Conduct	FOR APPLICANT
Subparagraphs 3.a – 3.b:	For Applicant

## **Conclusion**

Based on the record, 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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Nichole L. Noel  
Administrative Judge