



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 06-25500
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel

For Applicant: *Pro se*

September 15, 2010

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Questionnaire for National Security Positions (SF 86), on March 17, 2006. (Item 1.) On March 24, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines E (Personal Conduct) and F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on April 13, 2010, and requested a decision without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on May 20, 2010. The Applicant received the FORM on June 1, 2010, and was given 30 days to submit any additional information. He elected not to submit any additional information. The case was assigned to me on August 19, 2010.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 28, and single. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

#### **Paragraph 1 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has made false statements to the Government during the clearance screening process. The Applicant admitted the single allegation under this guideline.

Applicant filled out a Questionnaire for National Security Positions on March 17, 2006. (Item 1.) In that Questionnaire, the Applicant was required to answer Section 24.a., which asked whether the Applicant had used any illegal drugs in the last seven years, or since the age of 16, whichever was shorter. He answered, "No." This was a false answer since the Applicant had, in fact, used marijuana from 1998 to 2004, cocaine in 2003 and 2004, and heroin in 2003 and 2004. In fact, the Applicant admitted in an April 2007 interview with a Government investigator that, in February 2004, he overdosed on heroin and had to be hospitalized. (Item 6 at 3.) In the same interview, when asked about his falsification, he said:

The reason I did not list my past illegal drug use on my application or at my last interview was because I was ashamed of it. When I first met the investigator I was not sure what to expect of the investigation. I used illegal drugs in the past after my mother passed away. I did not think it would have an impact on my clearances. I am not proud of my past drug usage and I am trying to put the past behind me and start over. (Item 6 at 4.)

The Applicant stated in his Answer, "I agree that I made some mistakes during the investigation period. I was nervous and not sure what to expect." (Item 4 at 5.)

#### **Paragraph 2 (Guideline F, Financial Considerations)**

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admits all of the allegations in the SOR under this paragraph. Those admissions are hereby deemed findings of fact.

The SOR alleges, and Government exhibits substantiate, 15 delinquent debts totaling \$25,585. (SOR 1.a. through 1.o.) Some of these debts have been due and owing since 2001-2004. (Items 7, 8, and 9.)

Applicant states that his poor financial situation is primarily due to his history of drug abuse, and poor judgment with regards to managing his finances. He stopped using alcohol and drugs in 2004, but has been unable to pay any of his past due debts since then. (Item 6 at 4.)

In his Answer, Applicant states that he is attempting to fix his credit. He attached a letter from a company he hired to resolve the issues. However, the company states in the letter that they “specialize in credit report restoration.” (Item 4 at 6.) There is no evidence in the record as to which debts of the Applicant, if any, have been paid or removed.

### **Policies**

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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, 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 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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**

### **Paragraph 1 (Guideline E - Personal Conduct)**

The Applicant admitted that he falsified the Government Questionnaire concerning his serious drug use up to the year 2004.

Disqualifying Condition AG ¶ 16(a) applies to this case, concerning the "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities."

Mitigating Condition AG ¶ 17(c) has also been considered. It states that falsification can be mitigated where "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."

Applicant's single falsification occurred four years ago, and concerned activities that happened more than six years ago. He has expressed sincere remorse and intent not to engage in such conduct in the future. Under the particular circumstances of this case, he has mitigated the security significance of his conduct. Paragraph 1 is found for the Applicant.

### **Paragraph 2 (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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant, by his own admission, has over \$25,000 in past due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Applicant's financial difficulties started about 2001, and continue to the present. In addition, Applicant has failed to provide any evidence that he is paying any of his debts, or has any plan to do so. It is Applicant's burden to submit evidence showing that his financial situation has improved. He has not done so. This mitigating condition is not applicable to this case.

Applicant has not initiated a good-faith effort to pay off his creditors. There is no track record of his making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that he is \$25,000 in debt, I cannot find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c). Paragraph 2 is found against the Applicant.

### **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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is under financial strain, and has been so for several years. His debt situation is not yet under control. Under AG ¶ 2(a)(3), Applicant's conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a high likelihood of recurrence (AG ¶ 2(a)(9)).

On balance, I conclude that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, Paragraph 2 is found against the Applicant. As stated above, Paragraph 1 is found for the Applicant.

### **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:	FOR THE APPLICANT
Subparagraph 1.a.:	For the Applicant
Paragraph 2, Guideline F:	AGAINST THE APPLICANT
Subparagraphs 2.a. through 2.o.:	Against the 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge