



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-04120

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

01/28/2016

**Decision**

HOWE, Philip S., Administrative Judge:

On June 4, 2013, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). On February 7, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline J (Criminal Conduct). 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 on September 1, 2006.

Applicant answered the SOR in writing on February 26, 2015. Applicant requested his case be decided on the written record in lieu of a hearing.

On September 8, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 4,

was provided to the Applicant on September 16, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on September 23, 2015.

Applicant did not file a Response to the FORM within the 30-day time allowed that would have expired on October 23, 2015.

I received the case assignment on November 9, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant admitted both allegations in Paragraph 1. (Items 1, 2)

Applicant is 55 years old. He is married and does not have any children. He is divorced from his first wife. Applicant has worked for a defense contractor since 1981. He has a high school diploma. He also has had a security clearance since 1982. (Items 1, 2)

Applicant admitted to the theft allegations in the SOR. They state that he stole merchandise from a store in his town on two occasions. He did so because in 2012 he had trouble with a credit card at this retail chain store. He committed this first offense because he was angry with the store so he took the merchandise without paying for it. He committed the second offense in March 2013 in the same store for the same reason. The items taken were valued at \$65 and \$60. (Items 1-4)

Applicant returned to the store in 2013 and confessed to the store management that he stole several items from the store. He admitted these offenses voluntarily. He did so because he found out the problem was with the credit card company, not the store. The store prosecuted him for theft. On April 29, 2013, he pled guilty to both offenses and sentenced to serve 18 months of probation, 50 hours of community service for both offenses, pay a \$300 fine for each offense, and court costs. Under that state's laws, these theft offenses are misdemeanors. (Items 1-4)

Applicant submitted with his Answer two statements from the County Supervision Officer that Applicant completed the probation for both crimes from April 29, 2013, to October 24, 2014. Applicant also paid his fines and completed his community service. He also paid his court fees. (Items 1-4)

Applicant provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

## 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 adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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. See *also* EO 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 five conditions that could raise a security concern and may be disqualifying. Two conditions possibly apply:

(a) a single serious crime or multiple lesser offenses; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

Applicant was convicted in 2013 of two incidents of retail theft. He committed the offenses at the same store about one year apart. Both offenses were misdemeanors. He admitted both offenses voluntarily. Both disqualifying conditions apply.

AG ¶ 32 provides four conditions that could mitigate security concerns. One condition might apply:

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant confessed his crimes two years ago. He did so voluntarily and, without his cooperation, the merchant would not have known that there was a theft. Applicant completed his probation, paid his fines, and all his court fees.

Applicant has evidence of his successful rehabilitation. There has not been a recurrence of these offenses. He has worked for the same company since 1981.

### 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(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.

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 facts and circumstances surrounding this case. Applicant was an adult when he voluntarily stole the merchandise from a local store, once in 2012 and the second time in 2013. It was really the credit card company that caused the problem when he tried to use the card at that store in 2012. When Applicant discovered this fact, his conscience obviously bothered him because it was not the store's fault, so he confessed his crime.

However, there is nothing in the file to explain why he could have not paid with cash or used a different credit card. Applicant reacted in the wrong way to his problems with the store. There is no likelihood this offense will be repeated and no potential for pressure or coercion because the situation is a matter of public record.

Overall, the record evidence leaves me with no questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Criminal Conduct.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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PHILIP S. HOWE  
Administrative Judge