



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-05942
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

05/26/2015

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**Decision**

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DAM, Shari, Administrative Judge:

Applicant has a long history of serious drug abuse, which he began to address in 2010. He also has a long history of financial problems, which he began to address within the past two months. He failed to provide sufficient evidence to mitigate the security concerns raised under drug involvement or financial considerations guidelines. Eligibility for access to classified information is denied.

**Statement of the Case**

In September 2013 Applicant submitted a security clearance application (SCA). On December 12, 2014, Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, (Drug Involvement) and Guideline 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.

On December 18, 2014, Applicant answered the SOR (Answer), and requested a hearing. On February 24, 2015, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On March 10, 2015, DOHA issued a hearing notice, setting the case for March 31, 2015. The hearing was held as scheduled. At the hearing, Department Counsel offered five exhibits (GE), and Applicant offered three exhibits (AE) into evidence. (GE 1-5; AE A-C.) All were admitted. Two witnesses testified on behalf of Applicant. DOHA received the hearing transcript (Tr.) on April 8, 2015. The record remained open until April 20, 2015, to give Applicant an opportunity to submit additional information. Applicant submitted three exhibits, which I marked as AE D through F, and admitted without objection from Department Counsel.

### **Procedural Ruling**

At the beginning of the hearing, Department Counsel moved to amend the amount of a delinquent debt alleged in SOR ¶ 2.p from \$255 to \$755. Applicant had no objection. Department Counsel's motion to amend was granted. (Tr. 6-8.)

### **Findings of Fact**

Applicant admitted all allegations contained in the SOR. His admissions are accepted as factual findings.

Applicant is 36 years old. He is married and has two children, ages three and five. He earned an associate's degree in accounting in 2011. He began working for his current employer in December 2011.

### **Substance Abuse**

Applicant admitted that he has a history of illegal drug abuse beginning in 1993. He started using marijuana at the age of 16, while in high school. He began consuming alcohol at the age of 17.<sup>1</sup> (GE 3.) From October 1993 to June 2010, he used marijuana on multiple occasions. From July 1998 to October 2000, he used cocaine about ten times. From July 1998 to August 2010, he used heroin on multiple occasions. (GE 2, GE 3.)

In October 1998 Applicant, age 20, pled guilty to felony home invasion, second degree. He said he had used cocaine on the night of his arrest and did not know how he

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<sup>1</sup>The SOR did not allege alcohol consumption as a security concern. That fact will not be analyzed as a potential disqualifying condition, but may be considered under the analysis of mitigating conditions and the whole-person concept.

entered the home. He received probation under the Youth First Offender Act. During probation he failed seven drug tests. He was subsequently sentenced to 10 months of jail and another year of probation. In December 2000 he completed his sentence. (GE 3.)

In February 2006, March 2006, and April 2006, Applicant was charged with driving while license suspended. He pled guilty to the charges and received 12 months of probation and paid fines for all three charges. In March 2007, knowing he would fail a drug test while on probation, he asked the court to sentence him to inpatient treatment for drug abuse. In April 2007 he entered a drug treatment program. He was successfully discharged in May 2007. The clinical assessment suggested a diagnosis of opioid dependence and alcohol dependence. (GE 2, GE 3.) Applicant admitted that he was diagnosed as having a narcotic dependence. (GE 3.) After leaving treatment, Applicant attended both Alcohol Anonymous (AA) and Narcotics Anonymous (NA) for a period of time. (Tr. 23, 30.)

From August 2010 to October 2010, Applicant used his wife's OxyContin without a prescription. In October 2010 he sought drug treatment for opiate addiction. He participated in treatment until December 2010. He said the last time he attended an AA meeting was in 2012. (Tr. 25.) He acknowledged that his failure to continue participation in 12-Step meetings may have contributed to his relapse. (Tr. 24.) He admitted that he has a problem with alcohol and drugs. The last time he used illegal drugs was in September 2010. The last time he used alcohol was Thanksgiving 2012. (Tr. 33-34; GE 2.) Some family members used illegal drugs at a Christmas party he attended in 2014. (Tr. 32.)

During a November 2013 interview with a government investigator, Applicant stated that he no longer associates with people who use drugs. He said he had no intention of using illegal drugs in the future. He said his drug usage caused problems with his family. His wife knows that certain types of medications cannot be in the house. (GE 2.)

Over the years, Applicant experienced periods of unemployment. He candidly attributed some of his unemployment to problems associated with his use of alcohol or drugs. (Tr. 26.) The last time he was terminated from a position was three-and-a-half years ago. He said the reason for that termination was unrelated to substance abuse, but rather to inadequate training on a machine. (Tr. 27.)

### Financial

Applicant has a history of financial problems dating back to October 2005 when he filed Chapter 7 bankruptcy. In March 2006 the court discharged approximately \$39,000 of delinquent debts, which included a mortgage and automobile loan. (Tr. 27.)

Based on credit bureau reports (CBR), dated November 2013 and February 2015, the SOR alleged 16 delinquent debts, which totaled \$8,680, and one allegation involving delinquent income tax debts for 2011 and 2012, which totaled \$400. (Tr. 29.) These debts became delinquent between 2007 and 2013. (GE 4, GE 5.) Applicant discussed his debts during the 2013 interview, at which time he thought he would be able to resolve them with income tax refunds. That did not happen because his refunds were minimal. (Tr. 29.)

On March 16, 2015, Applicant entered into an agreement with a debt consolidation company to resolve debts. He made an initial payment of \$154 in March 2015. His monthly payments of \$133 begin on May 15, 2015, and will be automatically deducted from his checking account. (AE B, D, E.) The debts included in the repayment plan are: SOR ¶ 2.d for \$601; SOR ¶ 2.e for \$707; SOR ¶ 2.l for \$1,386; SOR ¶ 2.m for \$823; and SOR ¶ 2.o for \$660. They totaled \$4,177. (GE B.) The remaining 12 SOR alleged debts, including the unpaid tax liens, totaled \$4,903 and remain unaddressed. Several of those debts are medical bills. He said the debt consolidation company would not include those 12 debts for reasons that are unclear. (Tr. 39.) He was unfamiliar with debt consolidation companies until recently. (Tr. 50.) His student loans are deferred. (GE 4, GE 5.)

Applicant explained that he was unable to previously pay the debts because he has “been broke.” Since working for his current employer, he is beginning to earn enough money to address some of his debts. His annual salary is \$40,000 and his wife’s is about \$24,000. (Tr. 47.) He does not have any debts other than those alleged in the SOR. According to a budget he created with the consolidation company, his net monthly income is \$3,600 and expenses are \$3,248, leaving about \$237 remaining. He received some financial counseling through the company. (Tr. 42-44; AE B.) He and his wife do not have credit cards. (Tr. 49.) All of their bills are current. (Tr. 51.) He filed his 2013 and 2014 federal and state income tax returns. He does not owe any outstanding taxes for either year. (Tr. 35-36.) He and his family have been living with his father since July 2014 when his mother died. He said that the amount of debt he owes is not “insurmountable.” (Tr. 51.)

Applicant’s supervisor testified He has known Applicant since 2012 and interacted with him daily. He said that Applicant is a reliable worker. When Applicant started with the company, he was not earning much money, but as a result of his performance, he has given Applicant several raises. Applicant “has shown promise” since being hired. (Tr. 56.) He has never observed Applicant display any type of behavior that could raise concerns about drug or alcohol abuse. He considered Applicant to be trustworthy and gave him a favorable evaluation. (Tr. 55-60; AE F.)

Applicant’s wife of six years testified. She is a beauty culturist and works part-time. Currently, she cannot work because her hand was injured in an accident. She was married to Applicant when he relapsed in September 2010. When she noticed that his behavior was inappropriate, she confronted him about using drugs. While he was in

treatment, she participated in outpatient therapy sessions with him. She thinks his last drink was in 2011 or 2012. She does not allow alcohol in their home and does not want her children around illegal drugs. Since the relapse, she has not witnessed any behaviors by Applicant that would lead her to believe he is using illegal substances. She said, "he has been clean." (Tr. 63.) She said that she thinks her husband is a much better man than his history of problems shows. (Tr. 35, 60-71.)

Applicant testified candidly. He exhibited remorse over his drug problems and financial issues. He said, "In the past few years my life has changed completely." (Tr. 76.) He now has a job and a family. He does not "foresee drugs ever coming into the picture again." (Tr. 76.)

### **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, these guidelines are applied 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 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. Under Directive ¶ E3.1.15, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant 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."

A person applying for access to classified information seeks to enter 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.

## **Analysis**

### **Guideline H, Drug Involvement**

AG ¶ 24 expresses the security concerns pertaining to drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 describes three conditions that could raise a security concern and may be disqualifying:

- (a) any drug abuse (see above definition);
- (b) testing positive for illegal drug use; and
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program.

Applicant has a 17-year history of substance abuse that began while he was in high school. During a period of criminal probation between 1998 and 2001 he tested positive for illegal drugs about seven times. He also illegally used OxyContin, a legal drug that was prescribed to his wife. The evidence raises concerns under AG ¶ 25(a) and AG ¶ 25(b). He admitted that he was diagnosed as having an opiate dependency. There is evidence from his first admission into a drug treatment program in 2007 that he was evaluated for a suggested diagnosis of drug dependency and alcohol dependency, as documented by a licensed professional counselor, but not a social worker. Thus the record does not contain the necessary evidence to comport with the requirements set forth in AG ¶ 25(e). It does not apply. The evidence is sufficient to raise two disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 26 provides three conditions that could mitigate security concerns raised in this case:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;

(3) an appropriate period of abstinence; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation.

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Due to the long length and frequency of Applicant's history of illegal drug use, and relatively short period of abstinence in comparison, AG ¶ 26(a) does not provide evidence of mitigation. Applicant provided evidence of his disassociation from drug-using associates. Thus, AG ¶ 26(b)(1) has some application. Although he completed drug treatment in 2007, Applicant continued to use illegal drugs into 2010, resulting in attendance at another treatment program. There are no records from that program documenting aftercare requirements or suggesting a favorable prognosis by a duly qualified medical professional. AG ¶ 26(d) does not mitigate the security concerns raised under this guideline.

#### **Guideline F, Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

In 2005 Applicant filed Chapter 7 bankruptcy. Subsequent to a discharge of about \$39,000 of debt in 2006, he began accumulating debts that he was unable or unwilling to resolve until recently. The evidence is sufficient to raise both disqualifications.

The guideline includes three conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Many of Applicant's financial problems are related to his history of substance abuse, which were not circumstances beyond his control. Hence, AG ¶ 20(b) does not apply. Applicant stated he received credit counseling through the debt consolidation company he recently hired to resolve about half of the alleged delinquent debts. He provided a skeletal budget which the company helped prepare. There is insufficient evidence to establish clear indications that his finances and debts are under control. AG ¶ 20(c) does not apply. He did not submit evidence that he has paid any of the alleged debts. At this time, his efforts at resolving the debts are limited to the recent engagement of a debt consolidation company, as there is no evidence of any prior resolutions. He has not established a plan to resolve those debts not included in that repayment plan. AG ¶ 20(d) does not 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(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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is an honest 36-year-old man, who has successfully worked for a defense contractor over three years and has the support of his supervisor. He is a good husband and father. He is committed to changing his life and being responsible for his choices. He has taken some steps to demonstrate his intentions.

While those are positive facts in analyzing his eligibility for a security clearance, Applicant has a long history of substance abuse and financial problems that weigh heavily against the granting of a clearance. Although he sincerely testified that he has not used illegal drugs since September 2010, he provided insufficient evidence to corroborate that or to assure the Government that his stated commitment not to use illegal drugs in the future is credible. The record does not contain a solid and favorable prognosis from a health care provider that he is unlikely to use them again. He did not provide documentation that he has consistently participated in programs over the past years to assist him in his journey of abstinence. He testified that he has been unable to resolve his financial problems until recently as he has not earned enough money. That appears to be true. He is now beginning to address them in a responsible way, and has a plan to resolve at least half of them. Because those efforts occurred within the past three months, he has not yet had sufficient time to establish a track record of managing debts.

Overall, the record evidence leaves me with concerns as to Applicant's present eligibility and suitability for a security clearance at this time. He did not meet his burden to mitigate the security concerns arising from drug involvement or financial considerations.

