



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



In the matter of: )  
)  
) ISCR Case No. 14-06941  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

04/27/2016

**Decision**

MASON, Paul J., Administrative Judge:

Without supporting evidence, Applicant’s unsubstantiated statements in mitigation are insufficient to overcome the evidence under the guidelines for financial considerations, criminal conduct, drug involvement, and personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 20, 2014, Applicant signed and certified an electronic questionnaires for investigations processing (e-QIP) (Item 2) He was interviewed by an investigator from the Office of Personnel Management (OPM) on July 29 and October 28, 2014. (Item 3) On June 15, 2015, the Department of Defense (DOD) issued the Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F), criminal conduct (Guideline J), drug involvement, (Guideline H), and personal conduct (Guideline E). (Item 1) 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) implemented by DOD on September 1, 2006.

Applicant furnished his notarized answer to the SOR on July 16, 2015. He chose to have his case decided on the administrative record. A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, was sent to Applicant on September 16, 2015. In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation, mitigation, or extenuation. He was specifically advised that he could comment on the accuracy of the two summary interviews (Item 3) or object to interviews in their entirety because they are not authenticated by a Government witness. Since no objections were raised, the interviews will be entered into the record in this case. Applicant received the FORM on September 28, 2015, as established by his signature acknowledging his receipt of the FORM. His response was due by October 28, 2015. No response was received. The case was assigned to me on December 1, 2015.

### **Findings of Fact**

The SOR contains: 15 allegations under the financial considerations guideline; 5 allegations under the criminal conduct guideline; 2 allegations under the drug involvement guideline; and 2 allegations under the personal conduct guideline. Applicant admitted all the financial allegations. He indicated he did not know about the judgment at SOR 1.a until his July 2014 interview. He noted that he enrolled in a financial counseling service and was trying to contact the listed creditors because he intends to pay the delinquent debt. He indicated that his child support is less because he was making extra payments in the last eight months. He stated that he established a payment plan with the Internal Revenue Service (IRS).

Applicant admitted the four allegations under the criminal conduct guideline. He mentioned that the SOR 2.a and 2.b offenses were 13 years old. The SOR 2.c offense was not his fault and the charges were dropped. Applicant claims that the SOR 2.d offense occurred in 2007, and the charges were dismissed. SOR 2.e should be mitigated by the passage of time without involvement in any subsequent difficulty.

Applicant admitted SOR 3.a. He did not provide an answer to SOR 3.b, which will be treated as a denial of the allegation. He has never used drugs in his life. According to his answer, the drugs that were seized in the arrest (SOR 2.e) were not his (even though he purchased the drugs for resale). He has removed himself from that environment in the last seven years. Applicant admitted both allegations under the personal conduct guideline. He did not remember the desertion charge in September 2007, and only received an Article 15 for AWOL. He opined that the conduct alleged under SOR 2 and 3 should be mitigated by the passage of time and severed contacts with negative influences.

The Government credit reports dated July 1, 2014 (Item 7) and August 28, 2015 (Item 8), Applicant's two summary interviews dated July 29, 2014 and October 28, 2014 (Item 3), his answer to the SOR (Item 1), a Federal Bureau of Investigation (FBI) criminal record sheet (Item 7), and Applicant's military records dated October 15, 2007 (Item 5), and October 9, 2007 (Item 6), respectively, provide the source information for establishing the allegations in the SOR.

Applicant is 32 years old. He was married in July 2014. He has a 9-year-old stepdaughter and two daughters, ages 12 and 5. From June 2014 to the present, he has been employed in inventory control for a defense contractor. He has also worked as a warehouseman and an installer since receiving a general discharge from the United States Army (USA) in May 2009, where he had been on active duty since October 2003. Applicant recalled being investigated for a security clearance, but did not remember who conducted the investigation or the level of clearance.

### **Financial Considerations**

The SOR lists 13 delinquent debts and one judgment totaling \$20,343. A credit card creditor filed a judgment (SOR 1.a) against Applicant in May 2008. The judgment has not been paid. He was unaware of the judgment until he was interviewed by the OPM investigator in July 2014. He stated to the investigator that he intended to contact the creditor and establish a payment plan.

The last payment activity on eight medical accounts (SOR 1.b, 1.c, 1.d, 1.e, 1.f, 1.j, 1.k, and 1.m) occurred between March 2010 and April 2014. The medical accounts relate to a car accident that Applicant is disputing with several car insurance companies. The accident resulted in injuries requiring medical treatment and temporary unemployment. He opened a military student loan (SOR 1.h) while he was in the service. The last payment activity on the account was in November 2009. A credit card account (SOR 1.i) was transferred for collection in February 2011.

Three past-due child support accounts at SOR 1.g, 1.l, and 1.n, were transferred for collection in April 2014. The accounts were opened after Applicant had a car accident (date does appear in record) and was unable to make support payments.

Even though there is no pattern of judgments as observed by Applicant, there is a pattern of unpaid delinquent debts. Without documented evidence that shows what the financial counseling service is actually doing for Applicant, e.g., establishing a budget, investigating the delinquent debts, his statement of having received counseling does not mean much. Unsubstantiated declarations of making progress on a child support arrearage, and having a payment plan with the IRS, without paperwork to bolster each claim, results in the same lack of probative value as Applicant's statements about financial counseling. The financial allegations are resolved against Applicant.

## **Criminal Conduct**

SOR 2.a: The SOR alleges arrest and charges for burglary, theft, malicious destruction of property occurring in April 2002. The records show that Applicant was arrested for these charges in November 2002, not April 2002. and the charges were dismissed because of his "little involvement in the actual crime itself."

SOR 2.b: The SOR alleges an arrest and charge for theft occurring in January 2003. Item 4 reflects that the charge was dismissed.

SOR 2.c: The SOR alleges an arrest for disorderly conduct occurring in October 2006. Applicant admitted the arrest, but claimed that three individuals attacked him as he was leaving a restaurant. He contended the only reason he was charged was because the arresting officer was unable to determine what had happened. Applicant indicated the charges were dropped.

SOR 2.d: The SOR alleges an arrest for knowingly introducing dangerous contraband into a prison, criminal use of drug paraphernalia, and selling narcotics, occurring in March 2008. Applicant admitted the arrest occurred in August 2007 and not March 2008. At the request of his relative, Applicant gave an individual a ride to the individual's home. Applicant did not know the individual was carrying contraband, drug paraphernalia or narcotics. Applicant indicated the charges were dropped.

SOR 2.e: The SOR alleges an arrest for possession of a controlled substance with intent to distribute, criminal possession of marijuana, endangering the welfare of a child, and possession of a weapon, occurring in August 2008. Applicant admitted these offenses occurred, but the drug seized was cocaine not marijuana. He was driving a car and had a passenger in the front car seat with him. He was stopped by the police for a defective taillight. During a search of the car, a bag containing seven grams of cocaine was found under the driver's seat. Applicant had just purchased the cocaine to resell on the street to earn extra money to pay bills. Applicant and his passenger were placed under arrest and he remained in jail until November 2008, when he pled guilty to possession of cocaine. Applicant was on active duty at the time and was punished under Article 15 under the Uniform Code of Military Justice (UCMJ) in February 2009 because of the August 2008 offense. The common characteristic in each of the above criminal offenses is that Applicant was arrested. In the case of SOR 2.e, Applicant was convicted for possession of a controlled substance. The criminal conduct occurred when Applicant was 20 to 26 years old.

## **Drug Involvement**

SOR 3.a: The SOR alleges that Applicant used narcotics between February and April 2008. He denied using narcotics during the time alleged. The allegation is based on Applicant's "yes" answer to the illegal drug activity question of Item 2. The word "use" does not appear in the question. The question is directed to cultivation, manufacture, or sale of narcotics. Throughout the security investigation, Applicant has steadfastly

denied that he used any drug. SOR 3.a is resolved in Applicant's favor. But, Applicant's additional comments to the drug activity question (in the e-QIP) about his infrequent drug involvement and letting negative influences induce him to earn extra money, implies that Applicant was engaged in selling drugs for a two-month period in 2008. (Item 1 at 39-40)

SOR 3.b: The SOR alleges that information set forth in SOR 2.d and 2.e establishes drug involvement. Though the SOR 2.d charges were dropped, Applicant was arrested with an individual in possession of contraband and drug paraphernalia. SOR 2.e is resolved against Applicant because of the seriousness of the offense. Both criminal offenses occurred while Applicant was in the military.

### **Personal Conduct**

SOR 4.a: Item 5 indicates that Applicant was charged with a violation of the UCMJ, Article 85, desertion, that began on September 6, 2007. Though he did not recollect the desertion charge, he claimed he received only an Article 15 for being absent without leave, because his command recognized that his incarceration was the reason he did not report for duty. The administrative records dated October 7, 2007, indicate that no further action was taken because Applicant was prosecuted by other authorities. The desertion charge in 2007 and the cocaine conviction in November 2008, were probably the primary reasons Applicant received a general discharge from the Army in February 2009. (Items 5, 6)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions that are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on sound and prudent judgment. The decision should also include a careful, thorough evaluation of a number of general factors known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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. . . ." Because this case is decided on the administrative record, credibility assessments of Applicant

are limited to his statements and interview summaries. The applicant bears the ultimate burden of persuasion in demonstrating that he warrants a favorable security clearance decision.

## Analysis

### Financial Considerations

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Two pertinent disqualifying conditions are potentially applicable: AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*). Applicant's 13 delinquent debts and one judgment total approximately \$20,343. The judgment was filed in May 2008. The 13 debts became delinquent between November 2009 and April 2014. AG ¶¶ 19(a) and 19(c) apply.

Four mitigating conditions are potentially applicable: AG ¶ 20(a) (*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 reliability, trustworthiness, and good judgment*); AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*); AG ¶ 20(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 AG ¶ 20(d) (*a good-faith effort to repay overdue creditors or otherwise resolve debts*).

After weighing and balancing the evidence with the mitigating conditions, only AG 20(b) is applicable on a limited basis. AG ¶ 20(a) does not apply because the debts are still outstanding and are likely to remain in that status. The application of AG ¶ 20(b) is related to Applicant's car accident which resulted in temporary unemployment and medical bills largely beyond his control. Though the dispute between the car insurance companies provides justification for Applicant's inability to address the medical bills, it fails to supply a reason why no documented action was taken to address the other listed debts.

AG ¶¶ 20(c) and 20(d) do not apply. Applicant stated that he enrolled in financial counseling. He did not explain the steps taken by the service to aid in the payment of the listed debts. There are no indications the delinquent debts are under control. Applicant has provided no documentation of a payment plan to pay off the judgment or the other delinquent debts including the debts owed to the IRS.

## **Criminal Conduct**

The security concern for criminal conduct is set forth in AG ¶ 30:

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 of the criminal conduct guideline lists two disqualifying conditions that may be applicable to this case:

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

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

AG ¶¶ 31(a) and 31(c) apply based on Applicant's admission to five offenses between 2002 and August 2008. Though the November 2002 charges were dropped, security concerns are triggered because of the extent of Applicant's "little involvement" in the three offenses. (SOR 2.a) Security concerns are raised by the Government documentation indicating that Applicant was arrested on theft charges in January 2003, even though the charges were dismissed. (SOR 2.b) Applicant's explanation for simply walking out of a restaurant in 2006 and being attacked, then being charged with disorderly conduct (SOR 2.c), is not credible and raises cumulative security concerns about his judgment. Though the SOR 2.d charges were dismissed, Applicant should have exercised better judgment before allowing an unknown party with contraband and drug paraphernalia into his car. While the wrong drugs are alleged in SOR 2.e, Applicant admitted that he was in possession of a controlled substance (cocaine) with the intent to distribute (sell the drug) to pay bills. Having concluded the two disqualifying conditions under criminal conduct are satisfied, a heavy burden shifts to Applicant to submit persuasive evidence in rebuttal, mitigation, and extenuation.

AG ¶ 32 lists three pertinent mitigating conditions that may be applicable in this case.

(a) so much time has passed since the criminal behavior happened, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(c) evidence that the person did not commit the offense; and

(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 development.

Though about eight years have passed since Applicant's last criminal offense, Applicant submitted insufficient mitigating evidence under AG ¶ 32 to overcome a pattern of arrests starting in 2002, and ending with a conviction for cocaine possession in November 2008, while serving in the military.

### **Drug involvement**

Paragraph 24 of the AG sets forth the security concern for 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;

The pertinent disqualifying condition under AG ¶ 25 that may be disqualifying is:

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

In 2008, Applicant demonstrated poor judgment and untrustworthiness in purchasing a significant amount of cocaine for resale. His claim that the cocaine was not for his use does not alter Applicant's intention to have the drug in his possession, an element of the disqualifying condition. Though the drug was not for his use, he had the intention to illegally resell the drug for profit, a second element of the disqualifying condition. Applicant's affirmative answers (in his e-QIP) that he was involved in drug activity for two months in 2008, raises a reasonable inference that he had been selling drugs for a period of time before he was apprehended in August 2008. AG ¶¶ 25(c) applies.

The two potentially mitigating conditions under AG ¶ 26 of the drug involvement guideline are:

(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); and

(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 are used, (3) an appropriate period of abstinence, and a signed statement of intent with automatic revocation of clearance for any violation.

I have carefully evaluated the evidence under drug involvement. I conclude that none of the mitigating conditions are fully applicable. AG ¶ 25(a) does not apply for the same reason that have been discussed under the mitigating conditions of AG ¶ 32. Applicant's uncorroborated claims of a changed lifestyle exemplified by dissociating himself from drug users and a signed statement of intent with automatic revocation, is insufficient to mitigate his drug involvement, specifically the selling of drugs for profit.

## **Personal Conduct**

The security concern for personal conduct is set forth in AG ¶ 15:

AG ¶ 15. 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.

AG ¶ 16 contains one disqualifying condition that are relevant to Applicant's conduct:

AG ¶ 16(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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 person may not properly safeguard classified information.

Applicant's violation of the UCMJ, Article 15 (desertion) that commenced in September 2007, coupled with the criminal conduct and drug involvement during his military service, substantiates a whole-person assessment of questionable judgment and rules violations. AG ¶¶ 16(c) applies.

There are two mitigating conditions under AG ¶ 17 that are potentially applicable to the circumstances in this case. Those conditions are:

AG ¶ 17(c) the offense was 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

AG ¶ 17(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur.

Overall, Applicant's pattern of criminal conduct was serious. There are lingering security concerns that it could recur. I am unable to apply the AG ¶ 17(c) for the same reasons that have been addressed under AG ¶¶ 20(a), 26(a), and 32(a). AG 17(d) is not applicable because of the lack of independent evidence to indicate the adverse behavior is unlikely to be repeated.

### **Whole-Person Concept**

I have examined the evidence under the disqualifying and mitigating conditions of the guidelines for financial considerations, criminal conduct, drug involvement, and personal conduct. I have also weighed the circumstances within the context of nine variables of the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors listed in 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 the participation was 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)*.

The final security clearance decision must be an overall common-sense judgment based upon careful consideration of the specific guidelines, each of which is to be evaluated in the context of the whole person. (AG ¶ 2(c))

Applicant is 32 years old. He has been married since July 2014, and has two daughters and one stepdaughter. He has been employed in inventory control since June 2014. He served his country in the Army from 2003 to 2009.

Unfortunately, shortly before and during his Army service between 2003 and 2008, Applicant engaged in a pattern of increasingly serious criminal conduct that did not end until November 2008, when he pled guilty to cocaine possession. There is credible evidence showing that for a two-month period before he was arrested in August 2008, he was selling cocaine for profit. The security concerns raised by Applicant's drug involvement, criminal conduct, and personal conduct have not been mitigated. The absence of supporting evidence for Applicant's claims of resolving the listed debts results in the same conclusion. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

## 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 F):	AGAINST APPLICANT
Subparagraphs 1.a-1.o:	Against Applicant
Paragraph 2 (Criminal Conduct):	AGAINST APPLICANT
Subparagraphs 2.a-2.e:	Against Applicant
Paragraph 3 (Drug Involvement):	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	Against Applicant
Paragraph 4 (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 4.a-4.b:	Against Applicant.

## Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge