



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-05240

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

05/25/2016

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the drug involvement and criminal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 18, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H (drug involvement) and J (criminal conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on June 8, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on October 31, 2015. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on November 13, 2015. He responded with a letter and court documents that I have marked Applicant's Exhibits (AE) A and B. The case was assigned to me on March 2, 2016. The Government exhibits included in the FORM and AE A and B are admitted without objection.

### **Findings of Fact**

Applicant is a 40-year-old employee of a defense contractor. He has worked for his current employer since February 2014. He is a high school graduate. He is single with two children, ages 18 and 10.<sup>1</sup>

Applicant has a history of drug abuse and criminal conduct dating back to the late 1990s. He smoked marijuana about twice a week from about 1998 to September 2011. He used methamphetamine about twice a week from about 2004 to September 2011. He purchased marijuana and methamphetamine during those periods.<sup>2</sup>

Applicant's criminal arrests were primarily related to drugs, domestic violence, and failure to appear at his court dates. There is also an arrest for burglary, as discussed below.<sup>3</sup>

Applicant was arrested in 1999 and charged with unlawful possession of drug paraphernalia and being under the influence of a controlled substance. The charges were dismissed.<sup>4</sup>

Applicant was arrested in December 2003 and charged with battery-domestic violence. The charge was dismissed.<sup>5</sup>

Applicant was charged in March 2004 with battery-domestic violence. He pleaded guilty in May 2004. He was sentenced to 2 days in jail, 48 hours of community service, 6 months of domestic-violence counseling, and a fine. A bench warrant was issued in August 2004, because Applicant did not complete the sentence requirements. He was arraigned on the matter in March 2005, and the case was continued to enable him to complete the requirements.<sup>6</sup>

Applicant was arrested in July 2004 and charged with burglary, a felony. He was issued a citation for unlawful possession of drug paraphernalia. He pleaded guilty to the lesser misdemeanor charges of petit larceny and trespassing. The drug paraphernalia

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<sup>1</sup> Item 2.

<sup>2</sup> Items 1-4.

<sup>3</sup> Items 1-4.

<sup>4</sup> Items 1, 3, 4; AE B.

<sup>5</sup> Items 1, 3, 4; AE B.

<sup>6</sup> Items 1, 3, 4; AE B.

citation was dismissed. He was sentenced to 25 days in jail, with credit for time served. Applicant stated during his background investigation that he did not commit the crimes, and he pleaded guilty in order to get out of jail on time served.<sup>7</sup>

Applicant was issued a citation in July 2007 for unlawful possession of drug paraphernalia. He pleaded guilty in August 2007. He was sentenced to a \$500 fine.<sup>8</sup>

Applicant was charged in 2007 with three counts of battery-domestic violence. A bench warrant was issued. Applicant was arrested on the bench warrant in 2011. In September 2011, he pleaded guilty to one count of battery-domestic violence, and the remaining two counts were dismissed. He was sentenced to six months in jail.<sup>9</sup>

Applicant denied any illegal drug use or criminal activity after his September 2011 conviction. He disclosed his drug use and criminal history on his Questionnaire for National Security Positions (SF 86), which he submitted in February 2014. He wrote: "I was young and stupid when using and have learned my lesson from encounters with the law. I do not intend to ever use again." He discussed his drug use and criminal record when he was interviewed for his background investigation in April 2014. He noted that all his arrests occurred when he was under the influence of alcohol or drugs. He stated that he no longer used drugs or alcohol. He wrote in his response to the SOR: "I have learned from my mistakes and plan to stay on the right side of the law . . . now, and in the future."<sup>10</sup>

## **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, 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. 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.

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<sup>7</sup> Items 1, 3, 4; AE B.

<sup>8</sup> Items 1, 3, 4; AE B.

<sup>9</sup> Items 1, 3, 4; AE B.

<sup>10</sup> Items 2-4.

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.”

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.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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).

## **Analysis**

### **Guidelines H (Drug Involvement) and J (Criminal Conduct)**

The security concerns for drug involvement and criminal conduct are set out in AG ¶¶ 24 and 30:

24. *The Concern.* 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.

30. *The Concern.* Criminal activity creates doubt about an Applicant’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.

The guidelines note conditions that could raise security concerns under AG ¶¶ 25 and 31. The disqualifying conditions potentially applicable in this case include:

25(a) any drug abuse;<sup>11</sup>

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

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

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

Applicant has multiple arrests and convictions. He possessed and used illegal drugs for more than ten years. The above disqualifying conditions are applicable.

SOR ¶¶ 2.d, 2.f, 2.g, 2.j, and 2.k allege conduct that duplicates conduct alleged in other allegations. Those allegations are concluded for Applicant.

AG ¶¶ 26 and 32 provide conditions that could mitigate security concerns. The following are potentially applicable:

26(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;

26(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;
- (4) a signed statement of intent with automatic revocation of clearance for any violation;

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

32(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.

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<sup>11</sup> Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Applicant has not used any illegal drugs and there is no evidence of any other criminal activities since his 2011 conviction. His employment with a defense contractor is a sign of rehabilitation. He is credited with divulging his actions on the SF 86 and during his background interview. However, the length and volume of his criminal conduct, which includes more than ten years of illegal drug use, leave me with doubt as to whether Applicant is ready to be entrusted with access to classified information. I am required to resolve that doubt in favor of national security. I find that drug involvement and criminal conduct security concerns remain despite the presence of some mitigation.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and J in this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the drug involvement and criminal conduct security concerns.

### **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 H:	Against Applicant
Subparagraphs 1.a-1.c:	Against Applicant

Paragraph 2, Guideline J:	Against Applicant
Subparagraphs 2.a-2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraphs 2.f-2.g:	For Applicant
Subparagraphs 2.h-2.i:	Against Applicant
Subparagraphs 2.j-2.k:	For 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.

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Edward W. Loughran  
Administrative Judge