



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



In the matter of: )  
)  
) ISCR Case No. 17-02197  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicholas Temple, Esq., Department Counsel  
For Applicant: [Applicant's son], Personal Representative.

07/31/2019

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns under Guideline F (financial considerations), but she did not mitigate the security concerns under Guidelines E (personal conduct), H (drug involvement and substance misuse), and J (criminal conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

On August 10, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E, F, H, and J. Applicant responded to the SOR on August 28, 2017, and elected to have the case decided on the written record in lieu of a hearing. On December 18, 2017, she changed her request to a hearing before an administrative judge. The case was assigned to me on May 23, 2019.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 18, 2019, scheduling the hearing for July 11, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and called her son as a witness. She submitted documents

with her response to the SOR that will be considered, but she did not submit any additional documents at her hearing.

### **Findings of Fact**

Applicant is a 57-year-old employee of a defense contractor. She has worked for her current employer since December 2015. She attended college for a period without earning a degree. She is married for the third time, but she and her husband have been separated for more than ten years. She has two adult children. (Transcript (Tr.) at 30-32; Applicant's response to SOR; GE 1, 2)

Applicant has a history of criminal behavior, primarily related to substance abuse. She started smoking marijuana in about 1978 while in high school. She continued periodically using marijuana until about 2014. She told a background investigator in September 2016 that she smoked marijuana on a weekly basis, off and on, from 1978 until she stopped smoking marijuana in 2014. She was interviewed again in May 2017, and provided similar information. She stated that she did not use marijuana at all between 1992 and 1995, and then smoked marijuana, with some breaks of weeks or months, until 2014. In her response to the SOR, she wrote that she stopped using marijuana in 1984, and then resumed after decades of abstinence "for medicinal purposes only" for her bad back. She testified that she only smoked marijuana occasionally, maybe once every year or two with her friends, with her most recent use in about 2012. She later testified that her marijuana use varied from about once a month to about once every two to three months, with a period of abstinence of about eight to nine years. (Tr. at 25-28, 51-57; Applicant's response to SOR; GE 2)

Applicant was arrested in 1990 and charged with possession of a controlled substance. The controlled substances were marijuana and methamphetamine. She was convicted of the charge and sentenced to 30 days in jail, which was suspended, and probation for 24 months. (Tr. at 23-24, 34-38; GE 2, 3)

Applicant was arrested for assault in 2000. She stated that she was drunk, got in a fight with her ex-husband, and "poked" him with a pair of scissors. The District Attorney's Office declined to prosecute. (Tr. at 23, 38-40; GE 3)

Applicant was arrested in 2004 and charged with criminal mischief and disorderly conduct. She testified that she had been drinking, and she set her ex-husband's clothes on fire on the lawn. She thought the charges were dismissed. However, the FBI identification record indicates that she was convicted of the offenses. She was sentenced to six months in jail (suspended) and a \$500 fine for the criminal mischief offense; and ten days in jail and a \$100 fine (\$50 suspended) for the disorderly conduct offense. (Tr. at 23, 40-41; GE 3)

Applicant was arrested in 2006 for injury to property. She stated that she accidentally broke her sister's window. Her sister was angry at her for an unrelated matter and called the police. Applicant paid for the window, and charges were either never filed or dismissed. (Tr. at 22-23, 42-43; GE 3)

Applicant was arrested in 2011 and charged with driving under the influence (DUI). She pleaded guilty to impaired driving. She was sentenced to 180 days in jail, with 178 days suspended; probation for 12 months; 48 hours of community service; and a fine. Applicant does not believe she was too drunk to drive. She asserted that she only had one beer. She admitted it was a large beer of about 32 ounces. She stated that her blood alcohol concentration (BAC) was .04%. (Tr. at 20-22, 43-47; GE 2, 3)

Applicant was arrested in June 2015 and charged with disorderly conduct and trespassing on private property. She paid a fine, and was ordered to complete community service. The charges were then *nolle prosequi* (dismissed). She stated that she and a friend were in a bar in a resort town. Her friend became extremely intoxicated and was yelling and screaming. The hotel they were staying at attempted to kick them out. They were subsequently arrested. (Tr. at 20, 47-49; GE 2, 3)

Alcohol played a significant role in Applicant's criminal record. She stated that she rarely drinks anymore, and then only in moderation. She has not been arrested or charged with anything since the June 2015 arrest. Applicant moved to her current location in 2014 to live with her son who is in the military. He has been a positive influence on her, and she no longer associates with a bad crowd. He has noticed a change in her and believes that she is honest, loyal, and not a threat to national security. (Tr. at 28-29, 49, 58-62; Applicant's response to SOR; GE 3)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in April 2016. She reported her 2011 DUI and her 2015 arrest for disturbing the peace (disorderly conduct). She denied any involvement with illegal drugs in the previous seven years. Applicant told the background investigator that it was unintentional, and she must have misread the question. She testified that she did not list her marijuana use because she "wasn't a big-time marijuana smoker. It was an occasional thing, and [she] didn't think it would be a big deal." She also indicated that she is "not good with words . . . . [She] didn't leave it out on purpose. [She] just didn't know how to word it." (Tr. at 25-27; GE 1)

The SOR alleges two defaulted student loans and a \$370 delinquent medical debt. Applicant rehabilitated the student loans, and they are in good standing. She was jointly responsible for her ex-husband's medical debt. He was supposed to pay it. It is not reflected on the two most recent credit reports in evidence. (Tr. at 33-34; GE 4-6)

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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**

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) 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.

Applicant provided inconsistent explanations for why she did not report her marijuana use on her SF 86. She was not a credible witness. I find that she intentionally provided false information about her marijuana use on the SF 86. AG ¶ 16(a) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) 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;

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

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant discussed her marijuana use with the background investigator in September 2016 and again in May 2017. She then provided completely different

accounts in her response to the SOR and during her testimony. I am unable to conclude that Applicant now understands the importance of truthfulness in the security clearance process. There are no applicable mitigating conditions.

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

All of the Guidelines H allegations are cross-alleged under Guidelines J. The two guidelines will be discussed together. The security concerns for drug involvement and substance misuse and criminal conduct are set out in AG ¶¶ 24 and 30:

24. *The Concern.* The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

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.

Applicant has multiple arrests and convictions, including a conviction for possession of a controlled substance. She used marijuana for many years. The following disqualifying conditions under Guidelines H and J are established:

25(a) any substance misuse (see above definition);

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

31(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

31(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

AG ¶¶ 26 and 32 describe conditions that could mitigate drug involvement and substance misuse and criminal conduct 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) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used; and
- (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;

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;

32(c) no reliable evidence to support that the individual committed the offense; and

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

Applicant was either convicted or admitted culpability for all the arrests, with the exception of the 2006 arrest for injury to property (SOR ¶ 1.c). I conclude SOR ¶ 1.c for Applicant.

There is no evidence of marijuana use after 2014 or arrests after June 2015. I believe Applicant's son is a positive influence on her. Nonetheless, I still have significant concerns, primarily related to her credibility. As discussed above, Applicant intentionally provided false information throughout this process. I am unable to determine that additional drug abuse or criminal conduct is unlikely to recur. Applicant's conduct continues to cast doubt on her reliability, trustworthiness, and good judgment. The

above mitigating factors, individually or collectively, are insufficient to dispel the drug involvement and substance misuse and criminal conduct security concerns.

## **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has a history of financial problems, including defaulted student loans. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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 current reliability, trustworthiness, or good judgment; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant rehabilitated the student loans, and they are in good standing. She was jointly responsible for her ex-husband's medical debt. He was supposed to pay it. It is not reflected on the two most recent credit reports in evidence. Concerns about Applicant's finances are mitigated.



## 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(d):

(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 have incorporated my comments under Guidelines E, F, H, and J in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns under Guideline F (financial considerations), but she did not mitigate the security concerns under Guidelines E (personal conduct), H (drug involvement and substance misuse), and J (criminal conduct).

## 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 J:	Against Applicant
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.g:	Against Applicant
Paragraph 2, Guideline H:	Against Applicant
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	Against Applicant
Subparagraph 3.a:	Against Applicant

Paragraph 4, Guideline F: For Applicant

Subparagraphs 4.a-4.c: For Applicant

**Conclusion**

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