



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 18-02091
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

03/22/2019

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**Decision**

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HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Misuse) and Guideline J (Criminal Conduct). Applicant mitigated the security concerns raised by his past drug abuse and related criminal activities. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on June 12, 2017. On August 17, 2018, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines H and J. The DOD acted under Executive Order (E.O.) 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 DOD on June 8, 2017.

Applicant answered the SOR on September 17, 2018, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on October 4, 2018. On October 5, 2018, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 5, was sent to

Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on October 12, 2018, and responded on October 23, 2018. The case was assigned to me on December 6, 2018. On February 8, 2019, I reopened the record to allow both parties to submit any additional evidence. Neither of the parties submitted additional information, and I closed the record on February 22, 2019.

### **Findings of Fact**

Under Guideline H, the SOR alleges that Applicant purchased and used methamphetamine with varying frequency from April 1995 through at least March 2015, and that he manufactured methamphetamine from approximately March 2012 through at least July 2012. The SOR further alleges that in July 2012, Applicant was arrested and charged with unlawful manufacture of a controlled substance, he later pled guilty and was sentenced to three years' probation and fined. Applicant violated his probation, and it was revoked.

Under Guideline J, the SOR alleges that Applicant was arrested in 2002 and charged with receiving stolen property, and was arrested in 2007 and charged with receiving stolen property and flight to avoid in-state detainer. The SOR cross-alleges the July 2012 arrest, conviction, and sentence. It further alleges that in March 2015, Applicant was arrested and charged with burglary, he pled guilty and was sentenced to 12 months imprisonment to be served concurrently with the 22 months of probation that had been revoked from the July 2012 arrest and conviction. Applicant admits each of the allegations, offers brief explanations, and states that since he was released from incarceration, he has paid his fines and is no longer on probation. Applicant's admissions are incorporated in my findings of fact.

Applicant is a 41-year-old janitor employed by a defense contractor since April 2017. Applicant has two minor children. (GX 3.) Applicant first use methamphetamine in April 1995 while at a party with a friend. He states that he became immediately addicted. He began to use methamphetamine, which he purchased on the street, daily. Over time, Applicant turned to theft to support his addiction, which resulted in the 2002 and 2007 arrests. (GX 3; GX 4; GX 5.)

In 2012, Applicant's addiction escalated and he began to manufacture methamphetamine at home. His mother reported his activity to the police and Applicant was arrested and charged with manufacturing a controlled substance. He served 17 days in jail, and was sentenced to three years' probation. Despite being on probation, Applicant continued to use methamphetamine. In March 2015, he broke into a residence presumably to steal items, but did not take anything. Applicant was alarmed by his behavior and, recognizing that he needed help with his addiction, sought out local law enforcement and turned himself in for arrest. (GX 3.) He was arrested and charged with burglary and his probation was revoked. Applicant pled guilty and was incarcerated from March 2015 until January 2017. (GX 3; GX 4.)

Applicant successfully completed a drug treatment program and was accepted for work release in approximately September 2016. He was released from prison and successfully completed his probation in January 2017. He has been working for his current employer since April 2017, where he has been a crew leader for more than one year. He has fully paid his fines. (Response; Answer.) Applicant's employer is an employment rehabilitation and placement program familiar with Applicant's background. As a condition of employment, Applicant was required to undergo a background investigation and submit to a drug screening.

Applicant fully disclosed his prior drug use and related arrests on his e-QIP and openly discussed them during his personal subject interview. He is remorseful for the harm he caused his family and himself, including the financial strain he placed on his family because he was unable to maintain steady employment during his addiction. Applicant has not used methamphetamine or any other illegal substance since March 2015. He has no intention of using drugs or participating in criminal conduct in the future. His professional and personal lives are stable and he is supporting himself financially. He stated that "everyone" is aware of his past drug addiction and related criminal conduct. (GX 4.) Applicant stated his intention to never use drugs in the future on his signed, sworn e-QIP.

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant's meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

#### **Guideline H, Drug Involvement and Substance Misuse**

The concern under this guideline is set out in AG ¶ 24:

The illegal use of controlled substances . . . 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.

Applicant’s admissions, corroborated by the record evidence, establish the following disqualifying conditions under this guideline:

AG ¶ 25(a) any substance misuse; and

AG ¶ 25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution . . . .

The following mitigating conditions may also apply:

AG ¶ 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.

Applicant was addicted to methamphetamine for many years, during which time he committed criminal acts to support his addiction. However, when Applicant broke in to a residence in March 2015, he recognized that his addiction was out of control and that he needed help. Aware that he had committed a crime and was in violation of probation and would likely go to prison, he nevertheless voluntarily surrendered to law enforcement, which constitutes a profound acknowledgment of his drug involvement. He pled guilty, which necessarily required that he admit his conduct. Additionally, Applicant's past drug use is well known by his family, friends, and colleagues. He has not used any illegal substances since March 2015. He successfully completed a drug program, was forthcoming during his background investigation, and passed a drug screening. He has also submitted a signed statement of his intent to abstain from all drug involvement and substance abuse in the future. Given Applicant's four years of abstinence and the record evidence as a whole, I conclude that AG ¶ 26(b) applies.

### **Guideline J, Criminal Conduct**

The concern under this guideline is set out 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.

The following disqualifying conditions apply under this guideline:

AG ¶ 31(b): evidence . . . of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted; and

AG ¶ 31(d): violation or revocation of parole or probation. . . .

The following mitigating condition is potentially applicable:

AG ¶ 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.

While addicted to methamphetamine, Applicant committed crimes to support his addiction. He was arrested four times between 2002 and 2015, for receiving stolen property, fleeing to avoid detention, manufacturing methamphetamine, and finally for burglary. In 2012, he was placed on probation for three years, yet continued to use methamphetamine. In 2015, he broke in to a residence. However, he did not steal anything from the residence and voluntarily surrendered for arrest, pled guilty, and was sentenced to prison. He was granted work release in 2016 and released from prison and successfully completed probation in 2017. He has worked for his current employer since April 2017 and was promoted to crew leader over one year ago. He fully paid his fines. There is evidence of successful rehabilitation, including no criminal conduct in four years, successful completion of probation, and a good employment record. AG ¶ 32(d) applies.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a).

I have incorporated my comments under Guidelines H and J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but I have also considered the following:

Applicant has met his high burden of persuasion. His four years of abstinence clearly demonstrates his commitment to reform and rehabilitation. He accepts responsibility and is remorseful for his past conduct. Applicant candidly disclosed his past drug abuse and related criminal history. His voluntary surrender to law enforcement and his disclosures of adverse information are indicators of his willingness to self-report any unforeseen misconduct. His positive behavioral changes are a testament to his trustworthiness, reliability, and good judgment.

After weighing the disqualifying and mitigating conditions under Guidelines H and J and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his conduct. Accordingly, I conclude he has

carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline H (Drug Involvement):	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Paragraph 2, Guideline J (Criminal Conduct)	FOR APPLICANT
Subparagraphs 2.a - 2.e:	For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge