



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



In the matter of: )  
)  
) ISCR Case No. 18-02720  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

October 10, 2019

**Decision**

Lokey Anderson, Darlene D., Administrative Judge:

On March 29, 2017, Applicant submitted a security clearance applications (e-QIP). (Government Exhibit 1.) On January 4, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline J, Criminal Conduct; Guideline H, Drug Involvement and Substance Misuse; and Guideline E, Personal 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on February 13, 2019, and requested a hearing before an administrative judge. The case was assigned to me on August 22, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 23, 2019, and the hearing was convened as scheduled on September 10, 2019. The Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. The Applicant offered three exhibits, referred to

as Applicant's Exhibits A through C, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on September 18, 2019.

### **Findings of Fact**

Applicant is 37 years old, and divorced with two children. He attended a vocational college and received a machinist certification. Applicant is employed by a defense contractor as a tool maker. He is seeking to obtain a security clearance in connection with his employment.

#### **Guideline J – Criminal Conduct**

The Government alleges that Applicant has engaged in criminal activity that creates doubt about a person's judgment, reliability, and trustworthiness and calls into question a person's ability or willingness to comply with laws, rules, and regulations.

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

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, which can raise questions about an individual's reliability and trustworthiness.

#### **Guideline E – Personal Conduct**

The Government alleges that Applicant has engaged in conduct which shows a lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness, and ability to protect classified or sensitive information.

At the young age of 13, Applicant started using illegal drugs recreationally like his friends. It began with marijuana and alcohol. As time passed, his drug use got progressively worse, and escalated to crack cocaine and speed. He later turned to methamphetamine and heroin.

Applicant grew up in downtown Los Angeles with the gangs and drugs and was a by-product of the environment. He states that he is also a by-product of rape. He had no father ever involved in his life. His mother was simply trying to survive. Each of his siblings have different fathers. Between December 1997 and June 1999, Applicant committed various criminal offenses. In December 1997, he was arrested and charged with robbery. In March 1998, he was arrested and charged with grand theft auto. In May 1998, he was arrested again for grand theft auto. In June 1999, he was arrested and charged with vehicle theft. At the age of 15 was the first time he went to Juvenile Hall. Applicant spent at least three years total in Juvenile Hall for the previously mentioned offenses.

After getting out of juvenile hall, Applicant was homeless. He ran away from the youth authority program because he was raped by another inmate. He admits to having a hard time adjusting to the outside world. To maintain his drug habit, Applicant continued to commit crimes. In February 2003 he was charged with burglary and disorderly conduct. He was convicted and spent eight months in prison. In December 2003 he was charged with burglary and vehicle theft. He was convicted and spent 16 months in prison. He was incarcerated from September 2004 to October 2005. In October 2005, Applicant was charged with driving while license suspended. He was convicted and sentenced to 2 years of probation. In January 2006, Applicant was charged with possession of a controlled substance, crack cocaine. He was convicted and sentenced to 3 years of probation. In June 2006, Applicant was charged with possession of a controlled substance. He was convicted and sentenced to three years of probation. In August 2006, Applicant was charged with vandalism. Applicant was convicted and sentenced to two years of probation.

In August 2007 Applicant was charged with burglary in the first degree and attempted burglary of a house. He was convicted and sentenced to nine years and four months in prison. Applicant was incarcerated from August 2007 to October 2016 and remains on parole until October 2019.

Applicant did nine years and four months in prison. The skills he has that he put on his current job application, he acquired on his own while he was in prison. He was never able to put those skills to use until now. To survive the nine years and four months in prison, Applicant, who had great artistic talent, became a very famous tattoo artist. His artwork was well respected and he could get anything he wanted at any time while in prison. Thus, illegal drugs were always available to him. When he got out of prison, he worked at Home Boy Industries and went to school for thermals and designs and was sponsored by them. Applicant excelled. He then started applying for other jobs and was hired and worked for another aerospace company for about four months before he was contacted by his current employer and eventually hired.

While in prison, Applicant applied for a job with his current employer. About eight months or so after he applied, he was contacted. By this time, Applicant had been released from prison. Applicant was interviewed in April 2017 and at that time he told them everything about his past criminal record, drug history, and time in prison. When Applicant applied for the job, he was not aware that he needed a security clearance. He initially applied for a tool and die maker. During his interview with the defense contractor, who obviously saw potential in the Applicant, he was told that at some point he may need a security clearance. The defense contractor also told the Applicant that they would help him fill out the security clearance application if he needed help. Applicant was surprised to learn that he got the job and would be starting his employment in August 2017. His employer conducted an investigation into his background, and so when he began his employment in August 2017 he was given an interim clearance.

After getting out of prison, in October 2016, Applicant continued to use marijuana and alcohol. He started using it a couple times a week, and as time passed, his use

increased. He stated that he last used marijuana about a month before the hearing. (Tr. p. 44.) Applicant also started using methamphetamine and heroin again. In August 2018 Applicant desperately wanted help from his employer for his addiction. Applicant went to the person who hired him and showed him the tracks on his arm. Applicant admits that he has overdosed twice, once in prison, and once when he got out. He also admits that he has been diagnosed with Meth-related Psychosis and Post Traumatic Stress Disorder. With the help of his employer, Applicant entered a full time-recovery program. This was the first time in his life that Applicant felt that he has ever received real help for his addiction. This inpatient treatment program began on August 27, 2018, and Applicant successfully completed all levels of the treatment on January 25, 2019. (Applicant's Exhibit A.) Applicant provided psychiatric progress notes dated January 2, 2019, and January 23, 2019, indicating that Applicant was prescribed several medications as well as daily group and individual psychotherapy and support or ancillary service in order for the psychiatric care to have maximum benefit for his recovery. (Applicant's Exhibits B and C.) Applicant testified that he found the program to be extremely helpful and life changing. Robert Downey Jr. walked up to him at the recovery center and told him that they share the same story. Applicant was accepted for who he was, was weaning himself from his addiction, and working hard to improve his life. (Tr. p. 51.)

From 1998 to December 2017, Applicant used a number of illegal drugs to either escape his reality or because he was addicted and could not control the urge. He also purchased illegal drugs during this period. After he started working for his current employer, and after being granted an interim security clearance in July 2017, Applicant continued to use illegal drugs. After successfully completing the treatment program, Applicant relapsed and used marijuana and alcohol. After receiving the SOR from the government concerning his security clearance, Applicant made the decision to stop using alcohol and illegal drugs altogether. Applicant currently attends NA/AA meetings on a weekly basis and he has an AA sponsor. He is currently working the twelve steps of AA and is on Step 2. Applicant admits that over the years he has tried to stop using alcohol and drugs on his own, but was never able to conquer it by himself. He now has help and is doing much better than ever before. Applicant states that his supervisor and co-workers know all about his past criminal and illegal drug history.

On March 29, 2017, Applicant completed a security clearance application (EQIP). Section 22- Police Record, asked the Applicant if any of the following have happened? In the past seven years has the Applicant been or is he currently on probation or parole? Applicant answered, "NO". This was a false answer. He failed to disclose that he was on parole, which started in October 2016 and ended in October 2019.

On the same application, under Section 22 – "Police Record, the Applicant was asked a series of questions, Other than those offenses already listed, has the Applicant ever had the following happen to him? . . . Has he ever been convicted in any court of the United States of a crime, sentenced to imprisonment for a term exceeding 1 year for that crime, and incarcerated as a result of that sentence for not less than 1 year? . . . Has he ever been charged with any felony offense? . . . Has he ever been charged with

an offense involving alcohol or drugs?” Applicant answered, “NO,” to these questions. These were false answers. Applicant failed to disclose the conviction set forth above.

On the same application, under Section 23 - Illegal Use of Drugs or Drug Activity, the question asked, In the last seven years, has the Applicant illegally used any drugs or controlled substances? Applicant answered, “NO.” This was a false answer. Applicant failed to list his history of illegal drug use including marijuana, crack cocaine, methamphetamine and heroin.

On the same application, under Section 23 - Illegal Use of Drugs or Drug Activity, the question asked, In the last seven years has the Applicant been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any drug or controlled substance? The Applicant answered, “NO.” This was a false answer. He failed to list the illegal drugs he purchased for his use discussed above.

Applicant does not understand why he answered, “NO” to these questions and is not certain if he actually did. In any case, he testified that he was afraid that if he disclosed the information on the application, he would not get his security clearance. He also swore under oath that the information he provided was true and honest to the best of his ability. (Tr. p. 66.)

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 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), 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies 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.

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 J: Criminal Conduct**

The security concern relating to the guideline for Criminal Conduct 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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(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 is combination cast doubt on the individual’s judgment, reliability, or trustworthiness;

(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; and

(c) individual is currently on parole or probation.

Applicant committed numerous violations of the law, escalating to his last arrest and conviction, which was a felony. He has two strikes against him and a third would have prevented him from ever being released from prison. As a minor he spent about three years of his life in Juvenile Hall. As an adult, he spent over ten years in prison, his last stint being nine years and four months of his life. Applicant remains on parole until October 2019. The aforementioned disqualifying conditions have been established.

Four Criminal Conduct mitigating conditions under AG ¶ 32 are potentially applicable:

(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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

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

(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.

There is no question that Applicant is working hard to improve his life. He has not engaged in any crimes against others since he was released from prison. Hopefully, he will continue to improve his life and stay crime free. However, at this time, his long history of criminal conduct obviously aggravated by his exposure to excessive street violence and other crimes creates doubt concerning his judgment, reliability, and trustworthiness, and ability or willingness to abide by law, rules, and regulations. None of the mitigating conditions establish full mitigation.

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

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at AG ¶ 24:

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.

The guideline at AG ¶ 25 contains four conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia, and
- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are applicable:

- (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) 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.

None of the mitigating factors demonstrate full mitigation. Over the past 24 years, Applicant has abused a number of illegal drugs. Since prison, he has changed



his associations and the environment where drugs were once prevalent. However even after getting out of prison, and then after being hired by a defense contractor, and issued an interim clearance, he continued to use illegal drugs. Even after completing an inpatient treatment program for his drug addiction, he relapsed. He has now made a commitment to remain drug and alcohol free and live a sober lifestyle. He is commended for this recent decision to make a permanent life style change and is encouraged to continue working to improve his life. Time will only tell. With hard work and discipline, Applicant may eventually get to where he wants to go, as the rewards for good conduct are priceless, but at this time he has not yet conquered his addiction. At this time, his actions do not show the requisite good judgment, reliability and trustworthiness necessary to be eligible for access to classified information.

### **Guideline E - Personal Conduct**

The security concern for the personal conduct guideline is set out in 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 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions under AG ¶ 17 below:

(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;

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

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions are applicable. Applicant answered, "NO," to questions on his security clearance questionnaire concerning his police record, and illegal drug abuse, that he should clearly have admitted. There is no excuse for this dishonesty which calls his character into question. Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and trustworthiness. To be entrusted with the privilege of holding a security clearance, one is expected to be honest and truthful at all times, and to know and understand the rules and regulations that apply to them, and to always abide by those rules. Under the particular facts of this case, Applicant has not demonstrated this awareness. By failing to answer these questions correctly on the security clearance application, his conduct does not show honesty, integrity, good judgment or reliability. At this time, Applicant does not meet the qualifications for access to classified information.

### **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 considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline J, Guideline H, and Guideline E in my whole-person analysis. To hold a security clearance is a privilege and not a right. While holding a security clearance one is expected to show honesty, responsibility and good judgment at all times. Applicant has not demonstrated a positive pattern of conduct and the level of maturity needed for access to classified information. At this time, he is not an individual with whom the Government can be confident to know that he will always follow rules and regulations and do the right thing, even when no one is looking. Right now, he is not qualified for access to classified information, nor is it certain that sensitive information will be properly protected. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Criminal Conduct, Drug Involvement and Substance Abuse, and Personal Conduct security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a, through 1.l:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a, through 2.c:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a, through 3.e:	Against 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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge