



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 19-03794
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Kelly Folks, Esq., Department Counsel  
For Applicant: *Pro se*

10/27/2020

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**Decision**

\_\_\_\_\_

HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties due to circumstances largely beyond his control, but mitigated the concern by acting responsibly under the circumstances. His single use of cocaine in 2017 while unemployed, and his conduct between 2013 and 2015 that resulted in two reprimands by his employer was infrequent, is unlikely to recur, and is not recent. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on April 5, 2019. On April 10, 2020, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The DOD acted under Executive Order (Ex. Or.) 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) effective June 8, 2017.

Applicant answered the SOR on April 22, 2020, and requested a decision based on the written record without a hearing. Department Counsel submitted the Government's file of relevant material (FORM) on July 31, 2020, which included Government Exhibits (GX) 1 through 5. On August 12, 2020, the Defense Office of Hearings and Appeals (DOHA) transmittal letter and a complete copy of the FORM were sent to Applicant. Applicant's receipt is dated August 19, 2020. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information. Applicant timely filed a response. The DOHA transmittal letter and receipt are marked as Administrative Exhibit 1. The case was assigned to me on October 20, 2020.

### **Findings of Fact**

Applicant, 62, is a logistics analyst employed by a federal contractor since August 2017. He served on active duty in the U.S. Marine Corps from December 1984 until he retired in January 2005. While on active duty, he was awarded numerous medals and commendations. He earned his bachelor's degree in 2002 and his master's degree in 2015, and was enrolled in a technical institute from 2015 until 2016. He is divorced and has three adult children. He previously held a security clearance while on active duty and while working for the government. (GX 1.)

The SOR alleges two debts: SOR ¶ 1.a is a past-due mortgage loan for \$60,036 and SOR ¶ 1.b is a charged-off car-lease debt for \$9,226. Applicant denies SOR ¶ 1.a stating that he rehabilitated the account, and admits SOR ¶ 1.b with an explanation. The debts are reflected in Applicant's October 2019 credit bureau report (CBR) (GX 5).

The SOR further alleges that Applicant tested positive for cocaine in June 2017, was reprimanded by his employer in 2014 and 2015 for failing to appear at work and for submitting improper timesheets, and was also reprimanded by his employer in 2014 for the unauthorized use of a government sponsored credit card. In his answer, Applicant admits these allegations. However, in his response to the FORM, Applicant explains that he was reprimanded twice, once in 2014 for unauthorized use of his government-sponsored credit card and once in 2015 for failing to appear at work and submitting improper timesheets in 2013 and 2015. The underlying facts of these reprimands and suspensions are discussed more fully below. Applicant's admissions are incorporated in my findings of fact.

After retiring from the Marine Corps, Applicant was employed by a federal contractor from 2005 until 2009, when he obtained a position with a federal government agency. Following the Washington Navy Yard shooting in September 2013, Applicant misunderstood the guidance for reporting in, and failed to timely contact his supervisor. It was later determined by Applicant's employer that Applicant was absent from work without authorization and that he failed to properly submit his timesheets. In 2014, Applicant used his government-sponsored credit card for \$260 of unauthorized charges. He promptly repaid this account in full. However, these two actions resulted in Applicant's employer reprimanding Applicant and suspending him for five days in June 2014.

In March 2015, there was a snowstorm and Applicant lost power to his home. He was under the mistaken impression that the base where he was employed was closed due to the inclement weather conditions. He did not report to work and did not contact his supervisor until his power was restored. Applicant's employer took into account Applicant's prior conduct that resulted in his 2014 reprimand, and reprimanded him with a suspension for 10 days. He remained employed by this federal agency until November 2016. Applicant fully disclosed the circumstances of his two reprimands and suspensions on his e-QIP. He regrets his actions and has no intention of engaging in any similar future conduct.

In November 2016, Applicant left his position with a federal agency to pursue other opportunities, but was not immediately successful. He was unemployed from November 2016 until July 2017. During this period of unemployment, Applicant experienced significant financial strains and was unable to maintain his mortgage loan and automobile lease payments.

In 2016, Applicant contacted the creditor for his automobile lease, returned the vehicle, and paid the early termination fee for the lease. He thought the lease account was satisfied and closed. It was not until he received the SOR that he became aware of the outstanding balance of \$9,226 (SOR ¶ 1.b) on this account. He again contacted the creditor and was told that the creditor had sold the vehicle and charged off the account. The creditor informed Applicant that it would accept payment in full on the charged-off account. This account remains unresolved.

In December 2018, Applicant entered a repayment agreement for his \$60,036 delinquent mortgage loan (SOR ¶ 1.a). His monthly payments are \$200. Applicant's mortgage lender stated in a letter from April 2020 that Applicant was in compliance with the agreement and the loan balance was \$32,142. (Answer.)

Applicant's CBR shows a credit history dating back to 2000 that includes paid off personal loans, vehicle loans, credit cards, and current student loans. Applicant has not incurred any other delinquent accounts since his 2016-2017 period of unemployment. He is current on all his open accounts. (GX 5.)

During his period of unemployment, Applicant became "depressed and disillusioned about [his] possibilities and future." While attending a party in June 2017, someone offered Applicant cocaine and he used it. Applicant deeply regrets this conduct. Shortly after this single use of cocaine, he tested positive during a pre-employment drug screening. He stated that he has "not been involved with any of this type of activity before, or since." He recognizes the negative impact such conduct could have on his family, his community and himself. He has no future intention of any illegal drug use. He fully disclosed this conduct on his 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).

## **Analysis**

### **Guideline F, Financial Considerations**

The concern under this guideline 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....

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The record evidence establishes the following disqualifying conditions under this guideline: AG ¶ 19(a): an inability to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations.

The following 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 current reliability, trustworthiness, or good judgment; and

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances, and

AG ¶ 20(c): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The conditions that caused Applicant to become delinquent on two of his financial obligations arose due to circumstances which were largely beyond his control. Specifically, Applicant's financial issues are the result of a sustained period of unemployment. However, Applicant acted responsibly under the circumstances. He contacted the creditor of his vehicle lease, returned the vehicle, and paid the early termination fee. Upon learning that there was a past-due balance on this account, Applicant again contacted the creditor but was informed that payment-in-full was required to resolve the account. The creditor did not attempt to collect this debt and has charged off the account. Applicant has been in compliance with the repayment agreement with his mortgage lender since December 2018.

Despite his financial strains, Applicant managed to live within his means without incurring any additional debts. With the exception of the one outstanding SOR debt he incurred in 2016, Applicant has a long-standing sound financial record, which includes consistent repayment of personal loans, credit cards, and vehicle loans. His credit report is indicative of someone who is currently financially stable and lives within his means. Applicant's delinquent debts did not arise from lack of self-control, irresponsibility, or unwillingness to abide by rules and regulations and do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a), 20(b), and 20(c) apply.

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

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Applicant admitted that he was reprimanded by his employer between 2013 and 2015 for failing to appear at work, for submitting improper timesheets, and for the unauthorized use of a government-sponsored credit card. His misconduct raises the applicability of the following personal conduct disqualifying conditions:

AG ¶ 16(c): credible adverse information in several adjudicative issue 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 individual may not properly safeguard classified or sensitive information; and

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(3) a pattern of dishonesty or rule violations.

The following mitigating condition is potentially applicable:

AG ¶ 17(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.

Applicant's conduct which resulted in two suspensions and reprimands at work and his one-time use of cocaine constitute questionable judgment. However, Applicant has not engaged in any type of misconduct in the workplace since 2015. I considered his 2014 and 2015 misconduct to be minor offenses because they did not result in his termination and he continued in this employment until he voluntarily left in November 2016 to seek other opportunities. He fully disclosed the circumstances of the events that led to the reprimands on his e-QIP. He is remorseful for his actions.

Applicant stated that he regrets his decision to use cocaine one time in 2017. He has no history of drug use and no future intent to use illegal drugs. He recognizes the negative effects that could result from any such future conduct. In explaining the circumstances surrounding his conduct, Applicant did not make any excuses for his behavior, but instead accepted responsibility for his actions and expressed remorse.

There are no "bright line" rules for determining when conduct is "recent." The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

It has been over five years since Applicant has had any disciplinary issues in the workplace and more than three years since his one-time use of cocaine. Applicant's past conduct was infrequent, is unlikely to recur, and does not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 17(c) 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant served honorably on active duty in the Marine Corps for over 20 years and was awarded multiple medals and commendations for his service. Due to a sustained period of unemployment, he became delinquent on two accounts, but acted responsibly under the circumstances. He has a strong credit history and is currently financially stable and fiscally responsible. He had a few instances of questionable judgment between 2013 and 2017 but accepts full responsibility for his mistakes and will not act in a questionable manner in the future.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the potential security concerns raised by his financial issues and personal conduct. Overall, the record evidence leaves me with no questions or doubts regarding Applicant's eligibility and suitability for access to classified information. 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 F (Financial Considerations):	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraphs 2.a through 2.c:	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