



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



In the matter of: )  
)  
) ISCR Case No. 20-03159  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Lynch, Esq., Department Counsel  
For Applicant: *Pro se*

11/04/2021

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct, Guideline F, financial considerations, and Guideline H, drug involvement and substance misuse. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 8, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E, personal conduct, F, financial considerations, and H, drug involvement and substance misuse. 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) effective within the DOD on June 8, 2017.

Applicant's answered the SOR on May 24, 2021, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the

Government's file of relevant material (FORM), and Applicant received it on August 12, 2021. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 7. Applicant provided a timely response. He did not object to the Government's evidence. He submitted one document that is marked as Applicant Exhibit (AE) A. The Government had no objections. Items 2 through 7 and AE A are admitted into evidence. The case was assigned to me on October 20, 2021.

### **Findings of Fact**

Applicant admitted all of the SOR allegations, except ¶ 3.c, which he denied. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 40 years old. He married in 2004 and divorced in 2009. He has three children ages 17, 14, and 6. The two older children live with Applicant. The younger child lives in another state. Applicant has been employed by federal contractors since at least 2008, with a period of unemployment from May to August 2019. He has been with his present employer since August 2019. He has held a security clearance since 2008. (Item 3)

Applicant served on active duty in the military from October 2004 to December 2005 and was honorably discharged. He then served in the National Guard from 2008 to 2014. He tested positive for opioids or oxycodone on a random drug test, administered by his National Guard unit, in May 2013. In September 2014, he received a General Discharge for alcohol or other drug abuse. Applicant acknowledged using an expired prescription of oxycodone. (Items 3, 4)

Applicant's medical records reflect that he was prescribed oxycodone by his doctor. While he was being weaned off this drug, another drug was prescribed as a replacement. The medical records show that on December 2, 2011, his doctor authorized him to take a maximum of four oxycodone 15 milligram tablets a day. On December 12, 2011, he was advised by his doctor that the continued use of a narcotic for pain management had potential problems, such as dependence and tolerance. The doctor discussed with Applicant alternative pain management methods and the plan to reduce his prescribed narcotic medication. On December 28, 2011, the doctor reduced the daily maximum to three tablets; and on January 25, 2012, the prescription was reduced to a half-tablet to be taken as needed every six hours during the first week, every eight hours during the second week, every twelve hours during the third week, and once a day during the fourth week. After the fourth week, Applicant's doctor directed him to stop taking oxycodone. (Item 4)

On January 30, 2012, the doctor prescribed a new replacement medication. The medical records show that during Applicant's appointments, the doctor assessed whether Applicant was becoming dependent on oxycodone. For each visit that he prescribed

oxycodone, the doctor prescribed a certain number of pills and specifically noted that “no refills” were authorized.

During Applicant’s October 2019 background interview with a government investigator, he explained that in 2011 he had been prescribed oxycodone while in the military for a back injury. His prescription expired in 2012 or 2013. He did not use all of the pills during the period the prescription was valid and had pills left over. (Item 4)

After his military discharge, though he was no longer prescribed oxycodone, Applicant stated he continued to take about one tablet a month until October 2019 from pills that were left over from his prior prescriptions. Although he had oxycodone pills that were originally prescribed to him, he was no longer authorized to take them, as noted in his medical record. He told the government investigator that he did not believe taking the pills was illegal or wrong after the prescription’s expiration date because the pills had been prescribed to him. (Item 4)

Applicant held a security clearance during the time he was taking the expired and unauthorized oxycodone prescription. He told the government investigator that he intended to get a new prescription because he was unaware that using an expired prescription was an issue or concern. (Item 4)

In Applicant’s answer to the SOR, he stated:

I did not know of any law or regulation preventing me from taking as needed expired medication that was prescribed to me. I had spoken to my doctor back then about not prescribing me anymore due to the fact I had some left from my previous prescriptions, but I was told to have them filled and just take as needed. (Item 2)

Again I was unaware I was not allowed to take expired medication that was prescribed to me. (Item 2)

Applicant completed his security clearance application (SCA) in September 2019 and did not disclose any financial delinquencies. He did not disclose that he failed to file federal and state income tax returns for any tax year. During his October 2019 background interview, he disclosed that he had not timely filed his federal or state income tax returns for tax years 2015 through 2018. His explanation for failing to disclose this information on his SCA was that because he believed he was due a refund, he did not have to disclose his failure to file on his SCA. He did not have an explanation for why he failed to timely file the returns for tax years 2015 through 2018. He told the investigator that he was in the process of trying to obtain his W-2 income statements for the delinquent years, so he can file. Any derogatory information that was not alleged in the SOR, will not be considered for disqualifying purposes, but may be considered when applying mitigating conditions, making a credibility determination, and in a whole-person analysis. (Items 3, 4)

Applicant received Government interrogatories on December 11, 2020. In his February 2021 response, he indicated he had filed his 2017, 2018, and 2019 federal and state tax returns on December 14, 2020. He stated he was unable to find his W-2 income statements for tax years 2015 and 2016, but he was moving soon, and he would go through his boxes to find them, and then file the tax returns for these years. He anticipated he would receive refunds for these tax years. He did not provide copies of his 2017, 2018, or 2019 federal or state income tax returns to show when or if they were filed. He indicated in his response to interrogatories that he did not owe federal income taxes for 2017, 2018, or 2019. He stated he did not owe state income taxes for 2017 or 2019, but owed \$157 for 2018 and that he mailed a check for the amount to the state. No documentary proof was provided. (Item 4)

During Applicant's background interview, he disclosed that he was approximately \$12,000 in arrears for child support. He explained that his child's mother did not file for child support until 2015, when the child was one-year-old. Applicant had sent money for the child and was given credit for his payments by the court, but he still owed about \$7,500. He said that an additional \$100 was being taken from his pay each month, but because he had a period of unemployment, he was unable to make the payments and that is why he believed he owed about \$12,000. In his FORM response, Applicant stated that his child support arrearage was satisfied when he filed his delinquent tax returns and refunds were applied to the arrearage. He did not provide any documentary evidence to substantiate his tax returns were filed and his child support is in good standing. (Items 2, 4; AE A)

Applicant did not disclose other delinquent debts in his SCA. He was confronted by the investigator with the debts alleged in SOR ¶¶ 1.a (\$341); 1.b (\$149); 1.c (\$1,200); 1.d (\$4,511); 1.f (\$796); and 1.g (\$558). Applicant denied being aware of any of the delinquent debts, except SOR ¶ 1.f, which was owed to the Defense Financial and Accounting Service (DFAS) for failing to return equipment before his military discharge. He said he lost it. Applicant told the investigator that the debt in SOR ¶ 1.b was for car insurance that he let expire, and he thought it was paid in full. Regarding all of the alleged debts, he told the investigator that he would follow up with the creditors. In his SOR answer, he admitted all of the debts except SOR ¶ 3.c, which he denied, stating he did not know what the debt was for. He did not provide information on what action he may have taken to research this debt. All of the SOR debts are corroborated by Applicant's admissions and credit reports from September 2019 and December 2020. (Items 3, 4, 5, 6)

In Applicant's response to the FORM, he stated he had resolved the DFAS debt, but provided no documentary proof. He stated that he cannot find his W-2 income statements to file his 2015 and 2016 federal and state income tax returns. They remain delinquent. He is confident he was entitled to receive refunds, but because it has been more than three years since the required filing date, he would not receive them. Regarding the resolution of his remaining debts he stated: "I fully intend to have them paid in full. I would like to have them paid off within the next year or so if not earlier from my taxes next

year.” He provided no other information regarding the resolution of any of his other delinquent debts. (AE A)

As part of Applicant’s government interrogatories, he provided a personal financial statement. He does not list any debts that he is currently paying. He notes at the end of the month he has a surplus of \$1,791. (Item 4)

Applicant also stated that he has never committed a security violation. He takes his job seriously and considers it an honor to work on projects that give the United States military advantages on the battlefield. (AE A)

## **Policies**

When evaluating an applicant’s suitability for national security eligibility, 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 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, these guidelines are applied 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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

that an applicant may deliberately or inadvertently fail to 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 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 H: Drug Involvement and Substance Misuse**

The security concern relating to the guideline for drug involvement and substance misuse is set out in 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.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) any substance misuse;
- (b) testing positive for an illegal drug; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant tested positive for opioids or oxycodone on a random drug test while serving in the National Guard in May 2013. After his General Discharge for drug abuse, he continued to use pills from an expired prescription for oxycodone from about 2013 until October 2019. Applicant misused oxycodone while holding a security clearance from about 2013 to 2018. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from drug involvement. The following mitigating conditions under AG ¶ 26 are potentially 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;

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome the 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 being 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;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant was prescribed oxycodone while serving in the military. Medical records corroborate he was weaned off the drug and then told to stop using it. He continued to misuse the expired oxycodone prescription after he was discharged from the National Guard with a General Discharge for illegal drug use. Subsequently, he continued to misuse the drug until he was interviewed by a government investigator in October 2019. Applicant's explanation for using the expired prescription was because he did not believe it was unlawful to do so. Applicant was on notice after his discharge that his misuse of the expired prescription was improper. The medical records specifically noted that he was told to discontinue its use in January 2012, and he was prescribed a new medication as a substitute. I did not find Applicant's statements credible. His misuse of oxycodone from 2013 to 2019 is aggravated by the fact he held a security clearance during most of this time.

Applicant's conduct occurred over many years and there is insufficient evidence to conclude it is unlikely to recur. His failure to recognize that he should have discontinued the use of an expired prescription after his discharge from the military for drug use, shows poor judgment. AG ¶ 26(a) does not apply. Other than Applicant's statement, there is no other evidence to conclude that Applicant has stopped misusing oxycodone or has sought a medical opinion regarding any dependency issue. AG ¶¶ 26(b) and 26(d) do not apply. There is some evidence that Applicant's abuse of oxycodone was due to a back injury that was prolonged. The fact that he continued to use his left over pills after his doctor told him to stop raises concerns about his reliability and trustworthiness. There is insufficient corroborated reliable evidence to conclude his abuse has ended. AG ¶ 20(c) does not apply.

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

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group.

Applicant failed a random drug test by testing positive for oxycodone while serving with the National Guard in May 2013. He was misusing an expired prescription for oxycodone from approximately 2012 to May 2013. He was separated from the service with a General Discharge for drug abuse. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under 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;

(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's continued use of an expired prescription for oxycodone after his discharge from the military demonstrated poor judgment. He failed to follow his doctor's order to stop using oxycodone in January 2012, which led to his General Discharge. His conduct casts doubt on his reliability, trustworthiness and good judgment. I do not have sufficient evidence to conclude that Applicant's conduct has ceased or he has sought



counseling regarding his long-term misuse of oxycodone. None of the above mitigating conditions apply.

#### **Guideline F: Financial Considerations**

The security concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax required.

Applicant has numerous delinquent debts that began accumulating in approximately 2015. He failed to timely file his 2015 through 2019 federal and state income tax returns. Despite having approximately \$1,791 in surplus each month, there is no evidence that Applicant is making payments toward delinquent debts other than using

refunds from his tax returns. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;

(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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant admitted all of the debts in the SOR, except SOR ¶ 3.c. He did not provide evidence for why he failed to timely file his federal or state income tax returns for 2015 through 2019. Despite discussing his failure to file his 2015 through 2018 federal and state tax return with the government investigator in October 2019, he repeated his conduct by not timely filing his 2019 tax returns. Applicant stated he cannot find his W-2 income statements to file his 2015 and 2016 tax returns. He did not provide evidence that he contacted the IRS to resolve the issue. His presumption that he is entitled to receive a refund does not mitigate his failure to comply with the law. Although he stated that he filed his 2017 through 2019 federal and state income tax returns, no corroborating documents were provided. AG ¶ 20(g) does not apply.

Applicant indicated he was paying support for his child, but in 2015, the mother filed for court ordered support when the child was a year old. Applicant had a period of unemployment in 2019. Both of these matters may have impacted his finances and been beyond his control. He stated that his child support arrearage was satisfied when his delinquent federal income tax returns were filed in December 2020 and refunds were involuntarily applied to it. He provided no documentary evidence that his delinquent returns were filed, a refund was applied to his arrearages, or that his child support is

current. Applicant has not provided evidence that he has voluntarily addressed any of his other delinquent debts. The evidence is insufficient to conclude he has acted responsibly or that financial issues are unlikely to recur. There is no evidence of financial counseling. Using tax refunds as a financial management plan to pay delinquent debts is not considered a good-faith effort to resolve his debts. None of the mitigating conditions full apply.

### **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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines, H, E, and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant failed to meet his burden of persuasion. He did not provide sufficient evidence to conclude he has established a track record of being fiscally responsible. His failure to timely file income tax returns for multiple years shows an inability to comply with rules and regulations. His continued misuse of oxycodone while holding a security clearance raises serious questions. The record evidence leaves me with 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 security concerns raised under Guidelines H, drug involvement and substance misuse, Guideline E, personal conduct, and Guideline F, financial considerations.

### **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 E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a-3.k:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge