



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



In the matter of: )  
)  
) ISCR Case No. 21-00696  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicholas T. Temple, Esq., Department Counsel  
For Applicant: *Pro se*

01/06/2022

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns, but he did not mitigate the criminal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 14, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H (drug involvement and substance misuse) and J (criminal conduct). Applicant responded to the SOR on May 27, 2021, and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on September 20, 2021. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on October 11, 2021. He responded with an email that I have marked Applicant's Exhibit (AE A). The case

was assigned to me on December 2, 2021. The Government exhibits included in the FORM and AE A are admitted in evidence without objection.

### **Findings of Fact**

Applicant is a 46-year-old employee of a defense contractor. He has worked for his current employer since February 2020. He is a high school graduate. He is married with five children and a stepchild. (Items 3, 6)

Applicant has a long criminal record going back to 1995. Applicant was arrested and charged 17 times between 1995 and 2016. He also was a regular marijuana user until he quit in 2017. The majority of Applicant's arrests (15) were between 1995 and 1998. Those charges include multiple drug-related charges, but also include felony charges of assault, burglary, armed criminal action, probation violation, unlawful use of a weapon, assault on law enforcement, and first-degree murder. (Items 1-6)

Applicant was convicted of possession of up to 35 grams of marijuana in 1998 (SOR ¶ 1.i). He was sentenced to confinement for 180 days (suspended) and probation for one year. He was convicted of possession of up to 35 grams of marijuana in 2000 (SOR ¶ 1.k). He was sentenced to confinement for 60 days. (Items 1-6)

Applicant was acquitted of first degree murder, assault on law enforcement, and armed criminal action in 2000 (SOR ¶ 1.o). (Items 4-6)

Applicant was convicted of two counts of felony possession of a controlled substance (SOR ¶¶ 1.d, 1.e) and one count of distribution, delivery, or manufacture of a controlled substance (SOR ¶ 1.f) in 2001. He was acquitted of first degree assault (SOR ¶ 1.g). He was sentenced to confinement for seven years (suspended) and probation for five years on each of the possession counts, and confinement for thirteen years (suspended) and probation for five years on the distribution, delivery, or manufacture of a controlled substance count. (Items 1-6)

All of Applicant's convictions through 2001 were for offenses that were committed between 1995 and 1998. The prosecutors chose not to proceed with charges for the arrests identified in the SOR that did not result in an acquittal or a conviction. (Items 1-6)

Applicant was arrested and charged with possession of a controlled substance, unlawful use of a weapon, and possession of drug paraphernalia in 2013 (SOR ¶ 1.f). The disposition of the charges is unclear from the record, but there is no evidence that Applicant was convicted, and he indicated that the charges were dropped. (Items 1-6)

Applicant was arrested and charged with driving while intoxicated/alcohol in August 2016 (SOR ¶ 1.f). He was found guilty in April 2018 and sentenced to probation for two years. He completed the terms of his probation in April 2020. (Items 1-6)

Applicant does not deny committing most of the offenses. He stated that he was young and dumb and hung out with the wrong crowd. He denied committing the offenses that resulted in acquittals, including murder and assault on law enforcement. He also denied committing the 2013 charges. He stated that the gun, drugs, and drug paraphernalia seized during the 2013 arrest belonged to someone else. (Items 1-6)

Applicant was in jail for about two and a half years pending trial for murder and other charges. He stated that the time spent in jail was the impetus for changes in his life. He continued to use marijuana, but to a much lesser extent. In 2017, he quit using marijuana completely. He had a good job and a family. He wanted a better life for himself and his family. There is no evidence of any criminal conduct since he stopped smoking marijuana. (Items 1-6)

Applicant provided an extremely honest and candid response to the FORM. He acknowledged his past, and that he may not deserve a security clearance or even a job with his defense-contractor employer. He wrote:

I'm not proud of the life I use[d] to live but I'm grateful to God that I'm alive and free to talk about it. I wish there was a way to bury my past for good but I can't and I try to face it honestly and head on when asked about it. In closing I understand why a denial is being recommended. I honestly never expected an approval. I sincerely apologize for wasting anyone's time with this request and I humbly thank you for even reviewing my request. (AE A)

### **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

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

(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

(d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant's multiple arrests, including an arrest for violating his probation, establish the above disqualifying conditions.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following 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;

(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.

The majority of Applicant's arrests (15) were for crimes committed between 1995 and 1998. He stated that he was young and dumb and hung out with the wrong crowd. Applicant does not deny committing most of the offenses. He denied committing the offenses that resulted in acquittals, including murder and assault on law enforcement. He also denied committing the 2013 charges. The charges that resulted in acquittals and the 2013 charges are mitigated.

Applicant asserted that the two and a half years he spent in jail pending trial for murder was the impetus for changes in his life. I believe his statement about being changed. However, he was arrested for DWI in 2016; he continued to use marijuana until 2017; and he just completed probation in April 2020.

Applicant provided an extremely honest and candid response to the FORM. He acknowledged his past, and that he may not deserve a security clearance or even a job with his defense-contractor employer. I believe that Applicant now understands that there is more to life than drugs and crime, and that his job and family are what is important. Unfortunately, at this time, I cannot find his criminal conduct mitigated. His conduct continues to cast doubt on his reliability, trustworthiness, and good judgment. The above mitigating factors, individually or collectively, are insufficient to dispel the criminal conduct security concerns.

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

The security concern 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. 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 notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant's drug-related charges and marijuana use establish AG ¶¶ 25(a) and 25(c).

AG ¶ 26 provides conditions that could mitigate security concerns. The following 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; 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.

Applicant has not used marijuana since 2017, more than four years ago. I believe he has put that life behind him. I find that Applicant has abstained from illegal drug use for an appropriate period, and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) are applicable.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and J in my whole-person analysis. I agree with Applicant's assessment that he is not ready for a security clearance at this time. If he maintains his current path, he may reach a time where he is ready.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the drug involvement and substance misuse security concerns, but he did not mitigate the criminal conduct security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J:	Against Applicant
Subparagraphs 1.a-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.n:	Against Applicant
Subparagraphs 1.o-1.p:	For Applicant
Subparagraph 1.q:	Against Applicant

Paragraph 2, Guideline H: For Applicant

Subparagraphs 2.a-2.b: For Applicant

**Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Edward W. Loughran  
Administrative Judge