



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



In the matter of: )  
)  
) ISCR Case No. 21-01686  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

10/27/2022

**Decision**

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on January 28, 2019. On October 5, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and H. The CAF acted under Executive Order (Exec. 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) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR in an undated document and requested a decision on the written record without a hearing. Department Counsel submitted the Government's

written case on May 20, 2022. A complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on June 24, 2022, and did not respond. The case was assigned to me on October 3, 2022.

The SOR and the answer (FORM Items 1 and 2) are the pleadings in the case. FORM Items 3 through 11 are admitted into evidence without objection. Admission of FORM Item 12 is discussed below.

### **Evidentiary Issue**

The FORM included a summary of a personal subject interview (PSI) conducted on April 16, 2019. (FORM Item 12). The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. I conclude that he waived any objections to the PSI summary by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). FORM Item 12 is therefore admitted.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all 18 allegations under Guideline F, and all 3 allegations under Guideline H. His admissions are incorporated in my findings of fact.

Applicant is a 45-year-old warehouse identification production specialist for a defense contractor since January 2000. He has held a security clearance since joining the company. He is married and has two minor children. He earned a bachelor's degree in May 2013. (FORM Item 3 at 11, 34, 15, and 18.)

Applicant has 16 delinquent debts totaling over \$45,000. The debts are established by credit reports in the record. (FORM Items 8 and 9). The delinquent debts consist mostly of student loans in a default status. In 2018, his wages were garnished for failure to pay his student loans. He lists federal income tax indebtedness for each year he failed to file his income tax returns. When his mortgage interest rate increased he was unable to meet the increased payments and his home was foreclosed in 2013. (FORM Item 3 at 36-44.)

The specific debts in the SOR are detailed as follows:

**SOR ¶¶ 1.a-1f, 1.h-1.j, and 1.l-1.m: are past-due federal student loan accounts with the Department of Education, totaling a combined \$51,915.** Applicant admits these debts and states that they are being paid through wage garnishment.

**SOR ¶ 1.g: past-due account charged off in the amount of \$4,506.** Applicant admits the allegation. The debt is the remainder of his auto loan. His car was totaled in the DUI and his insurance settlement did not cover the remainder of his loan. He stopped making payments because of his other debts. (Form Item 12 at 5.)

**SOR ¶ 1.k: past-due account charged off in the amount of \$849.** Applicant admits the allegation. (Form Item 9 at 2.)

**SOR ¶ 1.n: past-due account with a balance of \$4,109.** Applicant admits the allegation. He did not list the debt on his SCA because he was unaware of it until he was confronted by the investigator during his PSI. (Form Item 12 at 3.)

**SOR ¶ 1.o: past-due account with a balance of \$2,785.** Applicant admits the allegation. He did not list the debt on his SCA because he was unaware of it until he was confronted by the investigator during his PSI. (Form Item 12 at 3.)

**SOR ¶ 1.p: past-due account with a balance of \$1,333.** Applicant admits the allegation. The debt is from a credit card. He stopped making payments because of his other debt. (FORM Item 12 at 4.)

Applicant has been relying on wage garnishment to resolve the student loan debts alleged in SOR ¶¶ 1.a-1.f, 1.h-1.j, and 1.l-1.m. While he stated he would investigate and start payments on the debts alleged in SOR ¶¶ 1.k and 1.n-1.p, there is no documented evidence of a repayment plan for the debts or that he had disputed the debts with his creditors. (FORM Items 2 and 12)

Applicant failed to timely file his federal and state income tax returns for tax years 2013 through 2017, as required. (SOR ¶¶ 1.q and 1.r) In his SCA, he attributed his failure to file the returns and pay the taxes to “missing documents and information necessary to file.” (FORM Item 3 at 37.) He states he turned over all documents and information in December 2018 to a tax preparer to get current. (FORM Item 3 at 37-38.) He lists federal income tax indebtedness for each year he failed to file his income tax returns. He provided no evidence of a repayment plan with the IRS. In his answer to the SOR, he stated he had filed his past-due federal and state income tax returns alleged in SOR ¶¶ 1.q and 1.r. were “up to date.” However, he did not respond to the FORM. Thus, there is no documentary record evidence to establish that the returns alleged have been filed.

The Guideline H allegations all stem from the same set of circumstances. First, on New Year’s Eve 2017, Applicant ingested a marijuana gummy bear as part of a drink served at a friend’s New Year’s Eve party. (FORM Item 12 at 1.)(SOR ¶ 2.a) Second, he used an Ambien pill later that evening when he was unable to sleep. The Ambien had been prescribed to his late mother, and not to him. (FORM Item 12 at 1.)(SOR ¶ 2.b) He admits both the marijuana use and the Ambien use occurred while he held a clearance. Third, later that night, in the early morning hours of New Year’s Day 2018, he was arrested and charged with driving under the influence (DUI) of liquor, drugs, or a combination

(Ambien). (SOR ¶ 2.c) He explained that he had no memory of how the incident happened, before speaking with a police officer about his car being in a neighbor's yard. Applicant was subsequently convicted of the charge. He was sentenced to a 180-day jail term (179 days suspended), placed on 12 months of probation, ordered to attend substance abuse education, and fined \$1,800. (FORM Item 3 at 30 and FORM Item 11 at 4.) (SOR ¶ 2.c) He confessed to the investigator in his interview he had failed to complete the court-ordered drug treatment program. (FORM Item 12 at 2.)

Applicant disclosed his New Year's Eve 2017 marijuana use on his SCA. He also listed the friend who hosted the party where he was provided the marijuana as a reference. He also said stated it would be the "last time using that." (FORM Item 3 at 32 and FORM Item 12 at 1.)

As noted, Applicant disclosed the Ambien use and subsequent DUI on his SCA; discussed the events in his PSI; and admitted them in his Answer to the SOR, but he provided no more subsequent evidence in mitigation, since he did not respond to the FORM.

## **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 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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." 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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.

## **Analysis**

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

The security 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. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person 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 Applicant has student loans placed for collection totaling over \$45,000; (SOR ¶¶ 1.a-1.f, 1.h-1.j, and 1.l-1.m.); a charged-off auto loan totaling \$4,506 (SOR ¶ 1.g); four past due accounts totaling \$9,076 (SOR ¶¶ 1.k, and 1.n-1p); failure to file federal and state income tax returns as required for tax years 2013 through 2017 (SOR ¶¶ 1.q, 1.r).

Applicant's admissions establish the following disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts), AG ¶ 19(c) (“a history of not meeting financial obligations”), and AG ¶ 19(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 as required”).

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;

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

(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous and ongoing.

AG ¶ 20(d) is not established. Applicant did not provide evidence to support his assertions that he had resolved his debts or had established a repayment plan. The credit reports reflect inaction on his part. He stated in his answer to the SOR that the student loan debts were being satisfied by garnishment of his pay. Payment by involuntary garnishment, “is not the same as, or similar to, a good-faith initiation of repayment by the debtor.” See ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011). He has set forth no plan to address them in a responsible way. See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021). His other debts, too, remain unresolved. AG ¶ 20(d) does not apply.

AG ¶ 20(g) is not established. Applicant has submitted no documentary evidence showing that he made arrangements with the appropriate tax authority to file the past-due tax returns alleged.

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

The record establishes a single use of marijuana by Applicant on New Year's Eve 2017 (SOR ¶ 2.a). It also establishes that he misused his mother's prescription Ambien prescription that same evening (SOR ¶ 2.b) and was arrested and convicted for DUI

(Ambien) later that night. (SOR ¶¶ 2.b and 2.c.).

The concern under this guideline 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.

As noted above, the three Guideline H allegations appear to have arisen out of the same set of circumstances. Applicant used marijuana at a New Year's Eve party in December 2017. When he could not sleep afterwards, he took an Ambien that had been prescribed to his late mother. At some point on the same night (early on New Year's Day 2018), he was arrested and charged with driving under the influence of Ambien. All of this occurred when he was granted access to classified information, and held a security clearance, and he admitted all three of the allegations.

Applicant's admissions establish the following disqualifying conditions under this guideline, as detailed in AG ¶ 25:

- (a) any substance misuse (see above definition);
- (b) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

The evidence shows that SOR ¶¶ 2.b and 2.c allege the same misuse of a prescription drug. (FORM Item 3 at 33, FORM Item 11, and FORM Item 12 at 1-2). When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). SOR ¶ 2.b is therefore resolved for Applicant. I considered them as one event in my whole-person analysis.

The following mitigating conditions are potentially applicable as detailed in AG ¶ 26:

- (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.

AG ¶ 26(a) is partially established. Applicant's use of marijuana and misuse of prescription drugs while holding a security clearance occurred almost five years ago under circumstances not likely to recur. However, his knowing use of marijuana followed by a knowing misuse of prescription drugs while holding a security clearance both cast doubt on his reliability, trustworthiness, and good judgment.

AG ¶ 26(b) is partially established. Applicant declared his intent to refrain from drug use in his SCA, and there is no indication of further drug use in the last five years. However, he lists as a reference on his SCA the friend who hosted the event where the drug alleged in SOR ¶ 2.a was provided, and he has not submitted a statement of intent with provision for automatic revocation of his clearance for any violation.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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.

I have incorporated my comments under Guidelines F and H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his



credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guidelines F and H, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts and drug involvement.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.r:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a and 2.c:	Against Applicant
Subparagraph 2.b:	For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale  
Administrative Judge