



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-01026
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

February 15, 2023

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of the Case**

On May 7, 2019, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). On March 31, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B, Foreign Influence, Guideline H, Drug Involvement and Substance Misuse; Guideline F, Financial Considerations; and Guideline E, Personal Conduct. The action was taken under Executive Order 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) dated June 8, 2017.

Applicant answered the SOR on June 10, 2022, and requested a hearing before an administrative judge. The case was assigned to me on August 16, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on August 19, 2022, and the hearing was convened as scheduled on October 5, 2022. The Government

offered six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant offered no exhibits. Applicant testified on his own behalf. The record remained open until close of business on October 12, 2022. Applicant submitted nothing further. DOHA received the transcript of the hearing (Tr.) on October 17, 2022.

### **Findings of Fact**

Applicant is 34 years old. He has a high school diploma and he has attended trade school. He is employed with a defense contractor as a Structures Aircraft Mechanic. He is seeking to obtain a security clearance in connection with his employment.

The Government alleges that Applicant's foreign influence could pose a security risk; he has engaged in illegal substance abuse; that he is excessively indebted; and that he falsified his security clearance application. Applicant admits each of the allegations set forth in the SOR. Applicant began working for his current employer in December 2019.

### **Guideline B- Foreign Influence**

Applicant's spouse is a citizen of Mexico. She crossed the border and came to the United States illegally. Applicant met her at a previous job, where they worked together. They dated for several years, and were married in 2009, in Las Vegas. After they were married, Applicant hired an attorney to assist them with immigration services. Applicant's wife's immigration application was initially denied. Applicant believes that she was denied because the paperwork indicated that she crossed the border with her two children in hand, subjecting them to danger. Applicant explained that her two children crossed the border, in an earlier date, and they did not come with her. They came before she did. Applicant stated that he is still in the process of getting his wife legal status in the U.S. He stated that his wife currently has a work permit that was granted about six months ago. He did not provide a copy of her work permit. She has a son and a daughter from a previous relationship, and two children with the Applicant.

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

Applicant used the prescription drug Norco, without a prescription, off and on from about 2007/2008 to at least August 2019. He explained that in 2007/2008, his father was in an accident at work, and Norco was prescribed to him. At some point, Applicant suffered back pain and complained to his father about it. His father gave him some Norco, and over time, Applicant became addicted to it. Applicant would obtain the drug from a friend at work. The cost of the drug was \$10 per pill. At times he would spend \$40 a day on the pills. Applicant's wife noticed that Applicant was spending money not accounted for. Applicant realized his addiction and in 2016/2017, he entered an out-patient drug rehabilitation program. The program lasted one year. Applicant completed the program and was able to completely abstain from drug use for about 2

and a half years. In 2020, Applicant relapsed and started using Norco again. At that time, Applicant was working for his current employer and he used Norco for about a six-month period. (Tr. p. 52.) Applicant believes that the loss of his brother in 1999, that he never really addressed, and the stress he experienced at home, caused him to relapse. In 2020, Applicant then entered a second treatment center for his Norco addiction. This time, Applicant's drug rehabilitation was a ten-day in-patient treatment program. He completed the program and has been drug free for the past two and a half years.

Applicant was terminated from his previous employment for hitting an airplane. Applicant underwent a drug test that was positive for Norco, and he admits that he was under the influence of Norco at the time of the accident. Applicant does not believe he disclosed this information to his current employer.

### **Guideline F – Financial Considerations**

Applicant is indebted to five creditors listed in the SOR, totaling \$24,489. He admits each of the allegations set forth in the SOR under this guideline. Applicant's credit reports dated May 24, 2019; March 23, 2020; and August 5, 2022, confirm this indebtedness. (Government Exhibits 4, 5 and 6.) The following delinquent debts are of security concern:

1. A debt is owed to a bank for a credit card account that was charged off in the approximate amount of \$5,540. Applicant has made no payments towards the account. He recently received court documents regarding the matter. The debt remains owing.
2. A debt is owed to a creditor for an account that was charged off in the approximate amount of \$413 with a total balance of \$4,235. Applicant stated that he has paid the debt off, however he has not provided documentary evidence to support this.
3. A debt is owed to a creditor for a credit card account that was charged off in the approximate amount of \$2,834. Applicant has made no payments towards the debt. The debt remains owing.
4. A debt is owed to a creditor for a cellular account that was charged off in the approximate amount of \$1,199. The debt remains owing.
5. A debt is owed to a creditor for an account that was charged off in the approximate amount of \$10,681. Applicant does not recall the debt and has not looked into it. It appears to be a personal loan opened in 2015. (Government Exhibit 4.) The debt remains owing.

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

Applicant completed a security clearance application dated May 7, 2019. Section 23, asked him, "In the past seven years have you intentionally engaged in the misuse of prescription drugs, regardless of whether or not the drugs were prescribed for you or someone else?" Applicant answered, "NO." (Government Exhibit 1.) Applicant

deliberately failed to list the prescription drug use discussed above. Applicant stated that he was embarrassed about his past drug addiction and did not list it.

Section 26 of the same application, asked the Applicant, “In the last seven years, have you had bills or debts turned over to a collection agency? In the last seven years, have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?” Applicant answered, “NO,” to both questions. (Government Exhibit 1.) Applicant deliberately failed to disclose his delinquent debts discussed above.

## **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 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.

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, 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 B - Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;
- (e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's spouse is a citizen of Mexico, who resides with the Applicant. She has a work permit and is in the process of obtaining her legal citizenship in the U.S.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 and three of them are applicable in this case.

(a) the nature of the relationships with foreign persons, the country in which these person are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant's relationship with his spouse, who is a Mexican citizen does not present a heightened risk that could exploit, induce, manipulate, pressure, or coerce the Applicant into acting against the interest of the United States. There is very little information in the record about Applicant's spouse or her family. However, it is unlikely that Applicant would be placed in a position to have to choose between the interests of the U.S. and Mexico. He is a U.S. citizen and his wife is trying to become one. Their life and opportunities are here. Under the circumstances, and based on the evidence presented, Applicant's spouse does not pose a heightened security risk for the United States Government.

#### **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 three 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
- (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 are applicable. Applicant's addiction to Norco occurred off and on from 2008 to about 2020. He was terminated from his previous employment for an incident that occurred while he was under the influence of Norco at work. He received drug rehabilitation treatment on two separate occasions for his addiction, and has only been drug free, this time, for about two and a half years. His actions are not mitigated.

## **Guideline F, Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant is excessively indebted totaling more than \$24,000. Each of the debts listed in the SOR remain owing. Although he stated that he has paid off one of the debts, he has failed to provide documentary evidence to support this contention. There is insufficient evidence in the record to conclude that he is financially stable, that he can afford his lifestyle, or that he has financial resources available to pay his past-due financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations 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, or 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; and



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

Applicant remains excessively indebted. There is no evidence in the record to show that he has made any attempt to pay his delinquent debts. Applicant has not demonstrated that he is in control of his finances or that he can pay his bills. Under the circumstances, Applicant has failed to meet his burden. None of the mitigating conditions set forth above under Guideline F provide full mitigation. This guideline is found against the Applicant.

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

The security concern relating to the guideline for Personal Conduct 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 or sensitive information.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(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 considered all of the mitigating conditions under AG ¶ 17 including:

(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; and

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

None of the mitigating conditions apply. A security clearance is a privilege and not a right. To be found eligible, it must be clearly consistent with the national interests to grant or continue a security clearance. The decision must be made in accordance with the DoD Directive and its guidelines. Applicant deliberately provided false answers to questions on his security clearance application in an effort to conceal his history of illegal drug use, and delinquent debts from the Government. His character and integrity are highly questionable. His personal conduct shows poor judgment, unreliability, immaturity, and untrustworthiness, which makes him ineligible for access to classified information. The Personal Conduct guideline is found against Applicant.

### **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 B, H, F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant has not shown that he is qualified for access to classified information. His history of substance abuse, his history of financial delinquencies and his recent falsifications on the security clearance application preclude him from security clearance eligibility.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. The Foreign Influence concern has been mitigated. For all these reasons, I conclude Applicant has failed to mitigate the Drug Involvement and Substance Misuse, Financial Considerations, 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 B:	FOR APPLICANT
Subparagraphs 1.a.	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a.	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a., through 3.e.	Against Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a. and 2.b.	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge