



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



In the matter of:)	
)	
)	ISCR Case No. 21-02489
)	
)	
Applicant for Security Clearance)	

Appearances

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

March 27, 2023

Decision

Lokey Anderson, Darlene D., Administrative Judge:

Statement of the Case

On January 28, 2021, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On April 21, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline J, Criminal Conduct, and Guideline E, Personal Conduct. 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 after June 8, 2017.

Applicant answered the SOR on July 13, 2022, and requested a hearing before an administrative judge. On August 12, 2022, Department Counsel moved to Amend the SOR to include five allegations under Guideline F, Financial Considerations. Applicant had no objection. (Tr. p. 9.) 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 18, 2022. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered nine exhibits, referred to as Applicant Exhibits A through I, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on October 27, 2022.

Findings of Fact

Applicant is 62 years old. He is divorced. He has a high school diploma and some college. He has also received training as a Certified Substance Abuse Counselor, and a Certified Aircraft Mechanic. (Applicant's Exhibit E.) He is employed by a defense contractor as an Aircraft Mechanic. He is seeking to obtain a security clearance in connection with this employment. He began working for his current employer in July 12, 2021. (Government Exhibit 1). He nets about \$1,100 weekly. He is also an Uber driver and earns between \$400 and \$500 a month. He has never applied for a security clearance before, and he has no military service.

Guideline J – Criminal Conduct

Guideline E – Personal Conduct

The SOR alleges twenty-one charges, arrests or both, spanning most of Applicant's early adult life, beginning in 1988, and continuing until 2010. They include numerous crimes such as Theft, Robbery, Burglary, Possession of Narcotics, Open Container in Public, and others, related to his history of drug and alcohol abuse, and addiction. These crimes resulted in convictions, and Applicant either spent time in county jail or in prison to satisfy the sentencing requirements for these violations. Applicant admits to each of the allegations set forth in the SOR. (Applicant's Answer to SOR.) His criminal attorney is currently working to expunge his criminal record. (Applicant's Exhibits A and B.)

In 1988, Applicant was 28 or 29 years old when he began having drug and alcohol problems. He explained that his mother raised him with his grandmother, and they lived together. It was about this time that his grandmother, with whom he was very close, passed away. Applicant suffered from severe depression and went in the wrong direction. He started using illegal drugs like marijuana, cocaine, and alcohol and as time passed he became addicted. To support his drug and alcohol habit, he would steal things like clothes out of people's garages. As time passed and his habit increased, he had to steal more frequently to maintain his habit. Following each arrest and conviction, he served time in jail, anywhere from several weeks to several months; and on two occasions, he went to prison. He estimates that he spent a total of about seven years of his life incarcerated for his criminal acts. (Tr. pp. 33-34.)

The following arrest history is of security concern and in chronological order:

u. In March 1988, Applicant was arrested and charged with Felony Burglary; First degree Felony Burglary; Second Degree and Misdemeanor Theft Petty/Theft of Personal Property. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)

t. In June 1988, Applicant was arrested and charged with Robbery in the Second Degree. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)

s. In September 1988, Applicant was arrested and charged with Misdemeanor-Theft Petty/Theft of Personal Property. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)

r. In November 1988, Applicant was arrested and charged with Misdemeanor Grand Theft of Personal Property and Felony/Receiving ETC Stolen Property. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)

q. In April 1989, Applicant was arrested and charged with 4 counts of Infraction/Drinking Alcoholic Beverages on Street, 2 counts of Felony Possession of Stolen Property, and 1 count of Misdemeanor-Possession of Stolen Property. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)

p. In November 1989, Applicant was charged with Petty Theft with prior conviction. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)

o. In December 1989, Applicant was charged with Theft. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)

n. In April 1990, Applicant was arrested and charged with Open Alcohol Container in Public in place not licensed for alcohol consumption. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)

m. In May 1990, Applicant was charged with Possession of a controlled substance. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)

l. In October 1990, Applicant was arrested and charged with Burglary. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)

- k. In November 1990, Applicant was arrested and charged with Possession Narcotics Controlled Substance. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)
- j. In May 1991, Applicant was charged with two counts of Burglary and Possession Narcotics Controlled Substance. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)
- i. In July 1991, Applicant was arrested and charged with one count of Possession Narcotics – Prob Rev and Burglary in the First degree. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)
- i. In August 1992, Applicant was charged with Prisoner who commits escape or attempt an escape without force or violence. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)
- g. In April 1993, Applicant was charged with Burglary, Forgery and Trespassing. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)
- f. In July 1993, Applicant was charged with 1-F ATT Robbery. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)
- e. In October 1993, Applicant was arrested and charged with 1CT1 Robbery in the Second Degree. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)
- d. In August 1996, Applicant was arrested and charged with Petty Theft with prior conviction and parole violation. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)
- c. In January 1997, Applicant was arrested and charged with Petty Theft with prior. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)
- b. In April 2005, Applicant was arrested and charged with Driving While Privilege Suspended or Revoked; Reckless Driving; and Driving Without A Valid License. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)
- a. In September 2010, Applicant was charged with Driving While Privilege Suspended or Revoked; Driving without a Valid License; and Violate Written Promise to Appear. Although he does not remember all of the particulars, Applicant admitted this criminal conduct. (Tr. p. 33-51, and 68.)

Following his last conviction, Applicant made amends to himself to immediately go to college and educate himself on his past behavior. He attended Charles Drew University and became a Certified Alcohol and Drug Counselor. (Applicant's Exhibit E.) He then acquired the experience he needed by working for various agencies, including a local hospital's substance abuse detoxication unit, and a mental health ward, before he opened his own program. His program was, for the most part, funded by the county to help those suffering from substance abuse. He became very successful for many years from 1999 to 2014. During that period, he worked closely with the Department of Mental Health and other contractor programs throughout the area and provided help to many individuals in the community addressing their substance addictions and educating them about their disease. The last place he had was a 35-bed men's facility for alcohol and drug recovery that also provided all meals and other necessities. His goal was to make sure that people would get off the street and had a place to live that addressed their mental health issues and their addictions. Many people came from various jails, or were simply down on their luck and needed help. Applicant was eventually forced to close his program due to county budgetary cuts and changes that eliminated the financial support for these programs. (Tr. p. 24, and Applicant's Exhibit D.)

Guideline F – Financial Considerations

- a. Applicant is indebted to the Federal Government for a tax lien filed against him in April 2010 in the approximate amount of \$23,929. At the time of the SOR amendment, the lien remained unpaid. (Applicant's Response to the Amendment dated August 19, 2022.)
- b. Applicant is indebted to the Federal Government for a tax lien filed against him in February 2012 in the approximate amount of \$31,139. Applicant admits that at the time of the SOR amendment, the lien remained unpaid. (Applicant's Response to the Amendment dated August 19, 2022.)
- c. Applicant is indebted to the Federal Government for a tax lien filed against him in May 2020 in the approximate amount of \$75,437. Applicant admits that at the time of the SOR amendment, the lien remained unpaid. (Applicant's Response to the Amendment dated August 19, 2022.)
- d. Applicant is indebted to the State for a tax lien filed against him in January 2014 in the approximate amount of \$5,881. Applicant admits that at the time of the SOR amendment, the lien remained unpaid. (Applicant's Response to the Amendment dated August 19, 2022.)
- e. Applicant is indebted to the State for a tax lien filed against him in June 2015 in the approximate amount of \$6,559. Applicant admits that at the time of the SOR amendment, the lien remained unpaid. (Applicant's Response to the Amendment dated August 19, 2022.)

Appellant explained that about ten years ago, he did not file his income tax returns on time or pay his taxes as he should have for several years. As a result, he

has owes a large amount of money to the tax authorities for delinquent back taxes. He is now trying to address these issues. To stay in their good graces, he recently contacted both taxing authorities and set up a monthly installment payment plan of \$150 monthly that he pays to the State and to the Federal Government respectively. To date, he has made two payments of \$150 to each tax authority. It is his understanding that \$100,000 of his Federal tax debt will fall off of his credit report in April 2023, and will no longer be collectible. Once that occurs, he will begin to address the remainder owed. (Tr. pp. 79-89 and Applicant's Exhibits F, G, H and I.)

From his current employer, Applicant has received a number of Certificates of Achievement for training, course completions, and Certification, and has been recognized for outstanding performance. (Applicant's Exhibit C.) He states that his annual appraisals reflect outstanding performance, and he recently received a pay raise. (Tr. 77.)

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 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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 J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person’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:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual’s judgement, reliability, or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matter of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted or convicted.

The guideline at AG ¶ 31 contains conditions that could mitigate security concerns. Both of the conditions are 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; 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.

Applicant's criminal record which occurred from 1988 to 2010 is extensive and egregious. However, since then, he has made a remarkable change in his life. He went to college and learned about his addiction so much that he became a Certified Alcohol and Drug Abuse Counselor and opened his own Recovery Program to help people like himself. He operated his program for many years before he had to close it for lack of funding. (Applicant's Exhibit D.) For the past thirteen years, his criminal record has been impeccable. Applicant has had no arrests or violations of the law. He is commended for his great accomplishments in life, and for helping many people with their addictions. He has grown and matured and established that he is sufficiently reliable and trustworthy. On the surface, his many violations of the law in the past give rise to serious concerns, however, a closer look shows that all of these occurred over thirteen years ago. They are now a thing of the long-ago past. His judgment, reliability, and trustworthiness for the past thirteen years has been intact and demonstrates that he is responsible and law-abiding. The before-mentioned disqualifying conditions have been mitigated. The Criminal Conduct guideline is found for the Applicant.

Guideline E- Personal Conduct

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

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

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a while-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information, and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information,

supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(3) a pattern of dishonesty or rule violations.

There are conditions mitigating security concerns under AG ¶ 17. Both of them are applicable here.

(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; and

(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.

The cause of his criminal conduct was his illegal drug and alcohol abuse and addiction. After finally getting tired of living like he was, Applicant educated himself about his addiction, put his learning into practice, and was able to stop using illegal drugs and alcohol altogether in 2010. For the past thirteen years he has not used any illegal drugs or alcohol. He has turned his life around and been extremely productive in society. He has cured himself and started helping others with their substance abuse problems. Applicant has been law abiding and demonstrated that he can be trusted. In totality, his conduct shows a high degree of maturity, good judgment, trustworthiness and reliability. Accordingly, the Personal Conduct guideline is found for the Applicant.

Guideline F - Financial Considerations

The security concern 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.

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

- (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 as required.

Applicant's delinquent tax debts to the Federal and state governments total in excess of \$140,000. These debts remain owing. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under AG ¶ 20;

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (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), and the individual acted responsibly under the circumstances;
- (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.

Applicant remains excessively indebted to both the Federal Government and to the State for delinquent back taxes totaling in excess of \$140,000. He has failed to provide sufficient evidence in mitigation. His delinquent tax debt will take some time to

resolve. Applicant has known for many years about his financial tax delinquencies and has done nothing until recently to resolve it. Applicant's inaction for so long reflects a pattern of unreliability, untrustworthiness, and poor judgment. When it comes to financial matters he has not shown the level of responsibility required. In fact, most of the back taxes set forth in the SOR remain owing, and have only recently begun to be addressed by the Applicant when he learned he would need a security clearance. Applicant does not meet the requirements to access classified information. Accordingly, the Financial Considerations guideline is found against the 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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines J, E, and F, in my whole-person analysis. Based upon the facts and analysis set forth above, Applicant has failed to provide sufficient evidence to demonstrate that he meets the qualifications for a security clearance.

Overall, 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 Financial Considerations security concerns. The Criminal Conduct and Personal Conduct concerns are found for the Applicant.

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 J:	Criminal Conduct:
Subparagraphs 1.a through 1.u.	For Applicant
Paragraph 2, Guideline E:	Personal Conduct
Subparagraph 2.a.	For Applicant
Paragraph 3, Guideline F:	Financial Considerations
Subparagraphs 3.a. through 3.e.	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge