



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



In the matter of: )  
)  
) ISCR Case No. 21-00405  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

April 27, 2023

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On April 1, 2019, Applicant submitted a security clearance application (SCA). On March 2, 2022, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines J and E. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing (Answer) on June 9, 2022, and requested a hearing before an administrative judge. The case was assigned to me on September 26, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on October 17, 2022. I convened the hearing as scheduled on December 8, 2022. The Government offered Government Exhibits (GXs) 1 through 4, which were

admitted without objection. Applicant testified on his own behalf. The record was left open for the receipt of additional evidence. On January 1, 2023, Applicant Exhibit (AppX) A was offered; and admitted into evidence, without objection. The record closed at that time. DOHA received the transcript of the hearing (TR) on December 19, 2022.

### **Findings of Fact**

Applicant admitted to the allegations in SOR ¶¶ 1.a. through 1.e., and 2.a. He denied SOR allegations ¶¶ 2.b. and 2.c. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 50-year-old employee of a defense contractor. He has been employed with the defense contractor since 2008. He is separated from his spouse, and has four children, three of whom are adults. (TR at page 15 line 22 to page 17 line 15, and GX 1 at pages 7, 10, 14 and 17~18.)

### **Guideline J: Criminal Conduct & Guideline E: Personal Conduct**

Although it is not specifically alleged, most, if not all, of Applicant's Criminal and Personal Conduct can be attributed to his addiction "to Crystal Methamphetamines." (GX 2 at pages 4, 7 and 8.) His spouse, whose whereabouts are unknown, also has this addiction problem. Applicant has been clean and sober since February 21, 2007, for about 15 years, and actively helps others with their sobriety. (TR at page 25 line 7 to page 30 line 23.)

1.a. and 2.c. Applicant admits that in April of 1999 he violated a protection order vis-à-vis his now, separated spouse. He was sentenced to "30 day(s) incarceration," pursuant to a guilty plea. (GX 3 at pages 1~3.)

1.b., 2.a. and 2.c. Applicant admits that in April of 1999 he was also charged with Assault, a felony. Pursuant to his "No Contest" plea, Applicant was initially sentenced to six months of confinement and five years of probation. However, in May of 2002, he violated that probation, which was revoked, and Applicant was sentenced to five years of confinement. While incarcerated he joined a prison street gang. (TR at page 20 line 2 to page 22 line 19, at pages 24 line 23 to page 25 line 6, and GX 3 at pages 4~9.)

1.c. and 2.c. Applicant admits that in January of 2004, he was charged with resisting arrest, was convicted, and sentenced to 30 days confinement. (TR at page 22 line 20 to page 23 line 4.)

1.d., 1.e. and 2.c. Applicant admits that in February of 2007, he was charged with Unauthorized Entry of a Dwelling, a felony; and in March of 2007, he was arrested and charged with criminal contempt of court. In October of 2007, Applicant was sentenced to one year of confinement (suspended) and placed on five years' probation. (TR at page 23 line 5 to page 24 line 22, and GX 3 at pages 10~13.)

## **Guideline E: Personal Conduct**

The allegations in 2.a. and 2.c. have already been discussed, above.

2.b. Applicant denies that he falsified his 2019 SCA, in answer to “Section 23 – Illegal Use of Drugs or Drug Activity,” by failing to disclose his participation in drug programs in 2007. He avers, credibly, that he “misunderstood the question,” and “inadvertently answered it incorrectly.” (Answer at page 3.) Applicant has since become “a manager of the program.” (TR at page 35 line 23 to page 36 line 14, and Answer at page 3.) His character and credibility in this regard are supported by those who know Applicant in the workplace. (AppX A.)

## **Policies**

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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 applying for national security eligibility 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline J: Criminal Conduct**

AG ¶ 30 sets forth the security concerns pertaining to criminal conduct:

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 two conditions that could raise a security concern and may be disqualifying in this case:

(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 judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant has a history of criminal conduct, stretching from 1999~2007. As a result, he spent five-plus years in confinement. The evidence establishes the above two disqualifying conditions.

AG ¶ 32 provides two conditions that could mitigate the above security concerns raised in this case:

(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 Conduct ceased about 15 years ago. It can be attributed, for the most part, to his drug abuse and addiction, from which he has been clean and sober, also for about 15 years. In fact, Applicant manages others towards sobriety. The evidence establishes mitigation under both above conditions. Criminal Conduct is found for 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

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.

This disqualifying condition does not apply. Applicant's alleged falsification was inadvertent and not intentional. Personal Conduct is found for Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable 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 and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant has a distinguished history of working in the defense industry. (AppX A.) He performs his job well. Applicant overcame his drug addiction more than 15 years ago, and since then has completely demonstrated rehabilitation and responsible conduct. No potential for coercion or duress remains after this passage of time. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Criminal Conduct 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 J:	FOR APPLICANT
Subparagraphs 1. a.~1.e:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2. a.~2.c:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. National Security Eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge