



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-02220
	)	
Applicant for Security Clearance	)	

**Appearances**

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

09/15/2023

\_\_\_\_\_

**Decision**

\_\_\_\_\_

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline J, criminal conduct, Guideline E, personal conduct, and Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On December 9, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines J, E, and F. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on January 5, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s File of Relevant Material (FORM) on April 10, 2023. The evidence

included in the FORM is identified as Items 3-11. (Items 1 and 2 include pleadings and transmittal information.) The FORM was mailed to Applicant, who received it on May 10, 2023. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any additional information. The case was assigned to me on August 23, 2023.

### **Findings of Fact**

In Applicant's answer, he admitted all of the allegations in the SOR, except for ¶¶ 2.b and 2.d, which he denied. I adopt his admissions as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact. (Item 2)

Applicant is 38 years old. He has worked for his current employer, a federal contractor, since March 2020. That contractor is subject to the drug-free workplace provisions of 41 U.S.C. 701 *et seq.* He served in the U.S. Army from 2008 to 2012 and was honorably discharged. He is married for the second time and has one child from his second marriage. Applicant is a high school graduate and has taken some college courses. (Item 3)

The SOR alleged, under Guideline J, that Applicant was charged with marijuana possession in March 2004; that he was charged with marijuana possession in November 2012; and that he was charged with marijuana and Xanax possession in October 2013. (¶¶ 1.a-1.c) In April 2017, he was charged with felony possession of dangerous drugs, including marijuana. He was convicted of possession of dangerous drugs and received a sentence that included two years of probation, which was due to expire in July 2023. (¶ 1.d)

The SOR alleged, under Guideline E, that Applicant used marijuana on various occasions between 2003 and 2017, and that he sold illegal drugs in 2017. (¶¶ 2.a and 2.c) The SOR alleged that he deliberately provided false information on his July 2008 and his February 2021 security clearance applications (SCA) when asked about his illegal drug use within the last seven years of each SCA listed above. (¶¶ 2.b and 2.d) The SOR also cross-alleged all the allegations listed under ¶¶ 1.a-1.d *supra*, and ¶¶ 3.a-3.b, *infra*.

The SOR alleged, under Guideline F, that Applicant failed to timely file his 2013-2019 federal income tax returns as required (SOR ¶ 3.a). It further alleged that he failed to file his 2013-2019 state income tax returns as required (SOR ¶ 3.b). The SOR also alleged Applicant was indebted on six delinquent accounts. (¶¶ 3.c-3.h)

### **Criminal Conduct.**

Applicant admitted all the allegations under Guideline J. In March 2004, he was arrested when he was in his college dorm room for suspicion of marijuana use. The arresting officer smelled marijuana, searched his room, but did not discover any

marijuana. He was jailed until his hearing where the charge was dismissed for lack of evidence. (Items 2, 6, p. 6)

In November 2012, Applicant's car was stopped by a police officer. The officer believed he smelled marijuana coming from Applicant and asked to search his car. Applicant consented to the search, but no marijuana was discovered. Applicant was given a ticket for possession of marijuana and chose to pay a fine of \$150 rather than contest the case in court. (Item 6, p. 6)

In October 2013, Applicant's car was stopped by a police officer. The officer believed he smelled marijuana coming from Applicant and asked to search his car. No illegal drugs were found from the search. The officer wrote Applicant a ticket for illegal possession of marijuana, based upon the officer's observations, and for illegal possession of Xanax, based again on the officer's observations. Applicant contested these charges and they were dismissed by a judge. (Item 6, p. 7)

In April 2017, local police arrived at Applicant's residence with a search warrant. They discovered a prescription for OxyContin, in his girlfriend's name, and seven ounces of marijuana. He told the police he took the OxyContin for back pain. He was arrested at the time, then released. He was charged with various felony drug charges, including sale of marijuana, and possession and use of marijuana and OxyContin. In April 2021, he pleaded guilty to lesser charges and was sentenced to 60 days in jail (deferred), two years of probation, and fines and court fees. Probation was to end in July 2023. There is no evidence as to the current status of his probation. (Items 6 (p. 5, 6, 13), 7-8)

### **Personal Conduct.**

Applicant admitted his use of marijuana from 2003 to 2017, and his sale of marijuana in 2017. He used marijuana recreationally during his high school years and through the years until March 2017. He asserts that he stopped using and possessing drugs after his felony arrest in 2017. He further asserts he has no future intent to use or possess illegal drugs. (Items 2, 6, p. 6, 11-12)

In Applicant's July 2008 SCA, he marked "No" to the question of whether he had illegally used any controlled substances within the last seven years. In an earlier question in the SCA asking about his police record, he identified a 2004 arrest for possession of marijuana. In his SOR answer, he denied this allegation stating that he either misread or misunderstood the question. (Item 2, 4 (pp. 25-26 of 29))

In Applicant's February 2021 SCA, he marked "No" to questions of whether he had illegally used, possessed, or sold any controlled substances within the last seven years. In an earlier question in the SCA asking about his police record, he identified a 2004 arrest for possession of marijuana, his 2012 arrest for possession of marijuana, and his 2017 felony arrest for various marijuana possession and sale charges. In his

SOR answer, he denied this allegation stating that he either misread or misunderstood the question. (Item 2, 3 (pp. 47-50 of 61))

The arrests discussed *supra* under criminal conduct were also crossed alleged under Guideline E. (See ¶ 2.e)

### **Financial Considerations.**

Applicant admitted failing to timely file his 2013 to 2019 federal and state income tax returns. He stated that in 2013 he became homeless and did not have an address where his IRS W-2 tax form could be sent. He was unemployed from August 2012 to January 2014. He claims he did not have the means to pay his taxes during this timeframe. In his February 2021 SCA, he stated that he finally had the means to file his delinquent tax returns. He stated, "I had planned to handle it and [sic] the beginning of the tax year with a tax lawyer." He failed to provide any evidence that his 2013-2019 federal and state tax returns have been filed. IRS tax transcripts, generated in July 2022, for tax years 2018 and 2019, show that no returns were filed for those years. Applicant's tax filings for 2013-2019 have not been resolved. (Items 2, 3 (pp. 52-55 of 61), 5-6)

Applicant admitted owing on six delinquent debts totaling approximately \$11,976. All the debts appear on his credit reports. He stated in his background interview that his intention was to pay the debts now that he had a well-paying job. He failed to present any evidence reflecting the current status of these debts or if he had made any efforts to resolve them. These debts are unresolved. (Items 2, 6, 9-11)

Applicant has not received financial counseling and he presented no budgetary information. (Item 6)

### **Policies**

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 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, these guidelines are applied 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(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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel, and 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 that an 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.

Section 7 of EO 10865 provides that 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 in this case. Potentially applicable conditions include:

(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;

(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; and

(c) individual is currently on parole or probation.

Between 2004 and 2017, Applicant was arrested or cited four times for marijuana use or possession. This culminated with his 2021 felony conviction, from his 2017 arrest, for marijuana possession. His sentence for his 2021 conviction included two years of probation that was to end in July 2023. AG ¶¶ 31(a)-31(c) all apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and considered the following relevant:

(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.

While a number of years have passed since Applicant's last drug arrest in 2017, he also has a history of drug involvement over time and resuming his involvement after long periods of abstention. This makes his current period of abstention less persuasive that it constitutes changed behavior. Additionally, there is no information in the record regarding the end of his probation and even if it did end in July 2023, insufficient time has passed to determine whether Applicant has changed his criminal behavior absent the threat of a probation violation. Neither of the mitigating conditions apply.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the personal conduct security concern:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. Potentially applicable conditions include:

(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;

(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 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; 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;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

Applicant denied that he deliberately provided false information when he completed his 2008 and 2021 SCAs. The Government has the burden to establish Applicant's deliberateness or intent to falsify under this disqualifying condition. Applicant stated that he misread or misunderstood the relevant questions, thus requiring the Government to establish his intent. Applicant's listing of his drug arrests in other sections of those SCAs provides circumstantial support for his argument that he misread or misunderstood the questions. If his intent was to mislead the Government about his drug involvement, then he most likely would not have listed these drug

arrests. The Government did not provide any contrary evidence regarding intent. Given this information, AG ¶ 16(a) is not established as it relates to SOR ¶¶ 2.b and 2.d.

Applicant's admissions of multiple marijuana uses between 2004 and 2017, and his sale of the same, reflect questionable judgment and an unwillingness to comply with rules and regulations. AG ¶¶ 16(c) and 16(d) are not perfectly applicable because the alleged conduct is sufficient and explicitly covered for an adverse determination under the drug involvement and substance misuse guideline. However, the general concerns about questionable judgment and an unwillingness to comply with rules and regulations contained in AG ¶¶ 15 and 16(c) are established as it relates to SOR ¶¶ 2.a and 2.c.

Applicant's criminal conduct and financial considerations-tax issues are cross-alleged under Guideline E. His criminal conduct was discussed *supra* and is adopted here. His failure to file federal and state income tax returns is discussed *infra*. Both types of conduct reflect questionable judgment and an unwillingness to comply with rules and regulations. AG ¶¶ 16(c) and 16(d) are not perfectly applicable because the alleged conduct is sufficient and explicitly covered for an adverse determination under the criminal conduct and financial considerations guidelines. However, the general concerns about questionable judgment and an unwillingness to comply with rules and regulations contained in AG ¶¶ 15 and 16(c) are established.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and considered the following relevant:

(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.

Applicant's marijuana involvement, his criminal offenses, and his failure to file his federal and state tax returns from 2013 to 2019 are not minor actions nor infrequent. They also cast doubt on his reliability, trustworthiness, and judgment. AG ¶17(c) does not apply. Although Applicant claims he will not use illegal drugs in the future, it is too soon past his probation period to determine whether he will adhere to that commitment. Additionally, he failed to address his tax-filing problem, despite his earlier statement of intent to do so. AG ¶ 17(d) does not apply.

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

AG ¶ 18 expresses the security concerns for financial considerations:



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. I have considered all of them under AG ¶ 19. Potentially applicable conditions include:

(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.

The record evidence supports that Applicant failed to timely file his 2013-2019 federal and state income tax returns as he was required to do. The evidence also supports that he incurred six delinquent debts. I find the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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 has failed to take any meaningful action to address his delinquent tax-filing issues regarding his federal and state income tax returns for the years alleged. He also failed to take any action to resolve his delinquent debts and provide proof thereof. Neither of the above listed mitigating conditions apply.

## 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 the 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 guideline 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 considered his military service and his unemployment.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline J, criminal conduct, Guideline E, personal conduct, and Guideline F, financial considerations.

## 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.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a, 2.c, 2.e:	Against Applicant
Subparagraphs 2.b, 2.d:	For Applicant

Paragraph 3, Guideline F:

AGAINST APPLICANT

Subparagraphs 3.a-3.h:

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's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Robert E. Coacher  
Administrative Judge