



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



In the matter of: )  
)  
) ISCR Case No. 22-01231  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew Henderson, Esquire, Department Counsel  
For Applicant: *Pro se*

October 19, 2023

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

On February 4, 2021, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On December 1, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H, F, J and G. The action was taken under Executive Order 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 effective June 8, 2017.

Applicant answered the SOR in writing on January 29, 2023, and requested a hearing before an administrative judge. I received the case assignment on May 1, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 1, 2023, and I convened the hearing as scheduled on July 5, 2023. The Government offered Exhibits (GXs) 1 through 6, which were received without objection. Applicant testified and submitted Exhibit (AppX) A, which was received without

objection. He also asked that the record be kept open until September 5, 2023, for the receipt of additional documentation. On September 5, 2023, Applicant submitted Post-Hearing Exhibits (PHXs) A through M, which were received without objection. DOHA received the transcript of the hearing (TR) on July 18, 2023. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR Applicant admitted the factual allegations in Paragraphs 1, 2 and 3 of the SOR, with explanations. He denied the factual allegations in Paragraph 4 of the SOR, with explanation.

Applicant is 49 years old, twice divorced, and has three children, two of whom are adults. He has worked for a defense contractor since June of 2018. (GX 1 at pages 7, 12, 18~20 and 22~23.)

#### **Guideline H - Drug Involvement and Substance Misuae**

1.a. Applicant admits that he used marijuana, about once or twice a month from about 1996 until his last usage in about July of 2015. In 2015, about eight years ago, Applicant found out that he had a “heart disease;” and as a result, stopped using marijuana. (TR at page 16 line 4 to page 17 line 22.)

#### **Guideline F - Financial Considerations**

2.b. Applicant has paid his 2015 Federal income tax debt through an “Online Account” by two payments: \$1,000 in April of 2022, and \$4,074 in August of 2023. This is evidenced by a document from the Internal Revenue Service (IRS). (PHX A.) On August 1, 2023, Applicant also filed his Federal income tax returns for tax years 2016 and 2017, as evidenced by those filings. (PHXs C and D.) He has also submitted documentation from the IRS showing that Applicant owes “\$0.00” for tax years 2017~2022. (PHX B.)

#### **Guideline J - Criminal Conduct**

3.a. Applicant admits that in August of 2015, about eight years ago, he was found to be in Contempt of Court during a child custody battle with his second wife. When asked if he was using drugs, which his former spouse alleged, Applicant averred “no,” since Applicant had previously ceased any marijuana usage due to his heart condition. However, he tested “positive” as a result of his past marijuana usage. (TR at page 18 line 18 to page 20 line 6.) As a result, Applicant was sentenced to seven days of confinement for Contempt.

3.b. Applicant admits that in July of 2018, about five years ago, he was arrested and charged with Driving Under the Influence (DUI). He claims he had consumed a

couple of beers. (TR at page 20 line 10 to page 21 line 6.) Applicant has completed all court-required DUI programs, as evidenced by court documents. (PHXs K, L and M.)

3.c. Applicant admits that in December of 2019, about four years ago, he was arrested and charged with being an “unlicensed driver” in State B, which had suspended his State B driver’s license as a result of his 2018 DUI arrest. (AppX A.) Although he had moved to State B, he was still using his previous valid State A driver’s license. (TR at page 21 line 14 to page 24 line 21.)

### **Guideline G - Alcohol Consumption**

4.a. As a result of his July 2018 DUI, noted above in subparagraph 3.b., Applicant no longer drives after drinking alcohol. (TR at page 30 line 22 to page 31 line 14.)

### **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 useful 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 Executive Order 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 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 seven conditions that could raise a security concern and may be disqualifying. Two conditions are established:

- (a) any substance misuse (see above definition); and
  
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Appellant used marijuana, about once or twice a month from about 1996 until his last usage in about July of 2015. Therefore, AG ¶ 25 (a) and (c) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. Two conditions may be 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.

Applicant's last marijuana usage was over eight years ago, and because of his heart disease he no longer uses marijuana. Drug Involvement and Substance Misuse is found for Applicant.

### **Guideline F - Financial Considerations**

The security concern relating to the guideline 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. One is potentially applicable in this case:

(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 failed to file his Federal income tax returns for tax years 2016 and 2017. The evidence is sufficient to raise this disqualifying condition.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(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 filed his delinquent Federal income tax returns, and is current with the IRS. Mitigation under AG ¶ 20 has been established. Financial Considerations is found for Applicant.

#### **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.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Two conditions apply, as discussed below:

(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 individual was formally charged, prosecuted, or convicted.

Applicant has two convictions of contempt of Court in 2015, and DUI in 2018. He was also arrested for being an Unlicensed Driver in 2019. This evidence raises security concerns under these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 32 contains two conditions that could mitigate criminal conduct security concerns:

(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;

(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.

Sufficient time has passed, nearly four years, since Applicant's 2019 motor vehicle code violation: and more than five years since his July 2018 conviction. Criminal Conduct is found for Applicant.

### **Guideline G - Alcohol Consumption**

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

The guideline at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying in this case. One condition may apply:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder.

Applicant committed and was convicted of a DUI in 2018. This evidence raises the above security concern, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate that concern.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. One conditions may apply:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or

does not cast doubt on the individual's current reliability, trustworthiness, or judgment.

Applicant no longer drives after drinking alcohol. His DUI occurred more than five years ago, and he has complied with all the court-ordered DUI programs. Alcohol Consumption is found for 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 an 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.

AG ¶ 2(b) requires each case must be judged on its own merits. 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. Applicant is clearly respected in the workplace and in his community. (PHXs E~J.)

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 security concerns arising from his Drug Involvement and Substance Misuse, Financial Considerations, Criminal Conduct, and Alcohol Consumption.



## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraphs 3.a~3c:	For Applicant
Paragraph 4, Guideline G:	FOR APPLICANT
Subparagraph 4.a:	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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge