



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01048
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

02/08/2024

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**Decision**  
\_\_\_\_\_

CEFOLA, Richard A., Administrative Judge:

On September 19, 2022, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On August 3, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H and F. 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 or about August 14, 2023, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter. I received the case assignment on October 10, 2023. DOHA issued a Notice of Hearing on October 16, 2023, and I convened the hearing as scheduled on November 7, 2023. The Government offered Exhibits (GXs) 1 through 3, which were received without objection. Applicant testified,

called two witnesses to testify and submitted Exhibits (AppXs) A through D, which were received without objection. He also asked that the record be kept open until December 7, 2023, for the receipt of additional documentation. On November 21, 2023, Applicant submitted AppX E, which was received without objection. DOHA received the transcript of the hearing (TR) on November 15, 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 Paragraph 1 of the SOR, but denied the factual allegations in Paragraph 2 of the SOR, with explanations.

Applicant is 46 years old, divorced, and has one child. (GX 1 at pages 5 and 18~19.) He has worked for a defense contractor since September of 2022.

#### **Guideline H – Drug Involvement**

1.a. Applicant used marijuana with varying frequency from about January 1992 until his last usage in August of 2022, about 15 months prior to his hearing. Applicant has taken a drug test to confirm his abstinence. (AppX C.) Prior to his application for a security clearance, Applicant’s usage was “a couple times a week.” Because of a snowboarding accident, Applicant had a “Medical Marijuana Prescription in California,” but since applying for a security clearance, he treats his pain with “Ibuprofen.” (TR at page 24 line 20 to page 28 line 15.)

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

Applicant blames his past financial difficulties, including failure to file Federal and state income tax returns, to periods of unemployment and underemployment. He also misunderstood the obligation to file income taxes, thinking that he had withheld more than enough income to cover his income taxes that were due. (TR at page 30 line 21 to page 32 line 19.)

2.a. Applicant has filed his Federal income tax returns for tax years 2015~2023, as evidenced by those filings. (TR at page 30 line 21 to page 34 line 16, and AppXs A and E at pages 3~4.)

2.b and 2.c. Applicant has filed his state income tax returns for tax years 2015~2020 for State A, and tax years 21 and 22 for State B, as evidenced by those filings. (TR at page 35 line 14 to page 37 line 13, and AppXs B and E at pages 1~2.)

## 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. One condition is established:

(a) any substance misuse (see above definition).

Appellant used marijuana over a period of about 30 years, in part pursuant to a medical prescription. Therefore, AG ¶ 25 (a) is 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 ceased his use of marijuana more than year prior to his hearing, and before he started working for his current employer in the defense industry. He now treats his snowboarding-injury pain with Ibuprofen. 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 and state income tax returns for tax years 2015~2022. The evidence is sufficient to raise these disqualifying conditions.

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 now filed all of his income tax returns. He was relying on misinformation and a misconception that, as he withheld more than enough monies

from his earnings, he did not have to file. After being informed of his filing requirements, regardless of his withholdings, Applicant filed all of his tax returns. He now understands and intends to meet his obligation to do so in the future. Mitigation under AG ¶ 20 has been established.

### **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. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant is respected in the workplace as being truthful and trustworthy, as testified to by his facility security officer and by a co-worker. 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 abuse, and financial considerations.

### **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
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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge