



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



In the matter of:)	
)	ISCR Case No. 23-01141
)	
)	
Applicant for Security Clearance)	

Appearances

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

07/22/2024

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On October 10, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations; Guideline E, Personal Conduct; Guideline J, Criminal Conduct; and Guideline H, Drug Involvement and Substance Misuse. 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 for cases after June 8, 2017.

Applicant answered the SOR on October 13, 2022; and January 8, 2024, and requested a hearing before an administrative judge. The case was assigned to me on December 18, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 14, 2024, and the hearing was convened as scheduled on March 7, 2024. The Government offered ten exhibits, referred to as Government

Exhibits 1 through 10, which were admitted without objection. The Applicant offered no exhibits, however he did testify on his behalf, as did his wife. The record remained opened to allow the Applicant to submit supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 18, 2024.

Amendments to the Statement of Reasons

On November 30, 2023, Department Counsel, pursuant to Section E.3.1.13 of the Directive 5220.6 amended the Statement of Reasons as follows:

Department Counsel amended Guideline E of the SOR, allegations 2.a., and 2.c., by striking them as originally written, and replacing them with the additional language as noted in the amendments.

Department Counsel amended Guideline E of the SOR by adding three additional allegations under 2.g., 2.h., and 2.i., the language as noted in the amendments.

Department Counsel amended the SOR by adding Guideline J, and allegation 3.a., which references conduct also included under Guideline E.

Department Counsel also amended the SOR by adding Guideline H, and allegation 4.a., which references conduct also included under Guideline E.

Applicant had no objections to any of the amendments. He responded to the amendments on January 8, 2024.

Findings of Fact

Applicant is 59 years old. He is married a second time and has one child. He is a high school drop out with three years of junior college. He holds the position of Facility Maintenance Technician employed with a defense contractor. A security clearance is required in connection with this employment.

Guideline F - Financial Considerations

The SOR alleged under this guideline that Applicant is indebted to seven creditors, which include collections and charge off accounts, totaling approximately \$11,000. In his answer, Applicant admits each of the delinquencies. Credit reports of the Applicant dated November 5, 2022; and September 26, 2023, confirm this indebtedness. (Government Exhibits 3 and 4.) Applicant began working for a defense contractor in October 2022. He applied for a security clearance for the first time that same month. Applicant is currently on disability and is not working. He underwent a

double knee replacement surgery in December 2023, and is still recovering. When he is working, he works full time and earns \$30 an hour.

Applicant stated that he has gone through a lot of bad and unfortunate situations in his life that have brought on lots of stress. Many things happened that were beyond his control, including deaths in his family, COVID, loss of jobs, a divorce, and child support requirements. At one point, he was homeless. He has a history of cocaine use and alcohol abuse. Applicant stated that, he has done a lot of things in his past that kept him from doing the right things. He started college but had to quit, he tried to start his own business, he became a jack of all trades to survive, and then COVID hit. His history of financial problems, poor personal conduct, criminal conduct, and drug involvement and substance misuse are the basis for this decision.

Applicant claims that he has transformed himself from his past transgressions and he is now an improved individual. He stated that he no longer consumes alcohol or uses illegal drugs. He is recently remarried, is involved in his church, and is working hard to further improve himself. His wife, whom Applicant's met on-line have known each other for four years. They married in 2023. His wife testified that when she met him, he consumed alcohol, but now he no longer drinks. He has been completely sober for almost four years. She also testified that since they have been together, he has never used any illegal drugs. She finds him to be honest, responsible, trustworthy, and a man of integrity. When she became unemployed due to COVID, he took responsibility for all of the household finances. He also volunteers doing maintenance and computer work for a Bible University. She stated that her husband is well respected in their community and in their church community. (Tr. pp. 29-35.)

1.a. and 1.b. Applicant failed to timely file his Federal and State income tax returns for tax years 2019, 2020, and 2021. He eventually filed these returns in April 2023. (Government Exhibit 2.) He stated that he did not file them on time because he did not have the money to pay the taxes he owed. During these years, he was either in jail, or had lost his job and was without a source of income. (Tr. p. 46.)

The following delinquent debts became delinquent and are of security concern:

1.c. A delinquent debt is owed to the IRS for delinquent back taxes in the approximate amount of \$2,882.55. Applicant stated that he believes he owes more like \$3,200. He set up a payment arrangement to pay \$30 monthly through automatic payroll deductions, but when he went on disability these deductions all stopped. (Tr. p. 49.) The debt remains owing.

1.d. A delinquent debt is owed to a creditor for a medical account (#924232902) and was placed for collection in the approximate amount of \$6,270. Between 2018 and 2022, Applicant incurred the debt when he got sick and went to the emergency room for medical services. Applicant stated that he intends to pay the debt when he returns to work. (Tr. pp. 55-56.) The debt remains owing.

1.e. A delinquent debt is owed to a creditor for a medical account (#924232901) and was placed for collection in the approximate amount of \$1,655. Between 2018 and 2022, Applicant incurred the debt when he got sick and went to the emergency room for medical services. Applicant stated that he intends to pay the debt when he returns to work. (Tr. pp. 55-56.) The debt remains owing.

1.f. A delinquent debt owed to a creditor for a medical account was placed for collection in the approximate amount of \$522. Between 2018 and 2022, Applicant incurred the debt when he got sick and went to the emergency room for medical services. Applicant stated that he intends to pay the debt when he returns to work. (Tr. pp. 55-56.) The debt remains owing.

1.g. A delinquent debt owed to a creditor was charged off in the approximate amount of \$433. This was a delinquent credit card. Applicant contacted the creditor and informed them that he is on disability and not working. The creditor has not responded. (Tr. p. 57.) The debt remains owing.

1.h. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$276. This was for cable services for Applicant's apartment. Applicant has not contacted the creditor. (Tr. p. 58.) The debt remains owing.

1.i. A delinquent debt owed to a creditor for an account was placed for collection in the approximate amount of \$300. Applicant settled the debt for \$45.09 on November 17, 2023. (Applicant's Post-Hearing Exhibit A.)

Guideline E – Personal Conduct

Guideline J – Criminal Conduct

2.a. and 3.a. Applicant has a history of criminal conduct involving a number of arrests, charges, and convictions. On May 30, 2009, Applicant was arrested and charged with Driving Under the Influence (DUI). He was found guilty on this charge on August 28, 2009. He was sentenced to 36 months probation, 2 days in jail, required to participate in a six-month first offender drug and alcohol counseling program, and required to pay a fine. On or about September 18, 2009, Applicant's probation was revoked for failing to comply with the terms of probation as he failed to provide proof of enrollment in the six-month drug and alcohol program by the required date of October 16, 2009. On or about December 23, 2009, a warrant was issued for Applicant's arrest. Applicant was required to pay an assessment or serve jail time and serve a total of 14 days in jail. (Government Exhibits 5 and 6.)

2.g. On December 1, 2009, Applicant was arrested and charged with public consumption of alcohol. He was required to serve one day in jail before the case was dismissed. Applicant denied this allegation. However, court records regarding the incident show otherwise. (Government Exhibits 5 and 7.)

2.h. On or about November 19, 2010, Applicant was arrested and charged with Driving a Motor Vehicle While License was Suspended or Revoked. Applicant was sentenced to 3 years probation, 30 days in jail, and required to pay court fees and a fine. Applicant failed to timely pay the court fees and fine. (Government Exhibits 5 and 8.)

2.b. On October 19, 2014, Applicant was arrested and charged with DUI. He was found guilty of the charge on February 27, 2015. (Government Exhibits 5 and 9.)

2.c. On June 27, 2019, Applicant was arrested and charged with DUI. He was found guilty on September 30, 2019. Applicant was sentenced to 60 months of probation, 4 days in jail, 5 days of community labor, and required to complete an 18--month alcohol program, a hospital and Morgue program, and a Mothers Against Drunk Drivers program. In about February 2023, Applicant's case was called for a bench warrant hearing. Applicant remains on probation for this conviction. (Government Exhibits 5 and 10.)

2.e. In June 2018, Applicant was suspended for a week from his employment at Company A for reportedly sleeping on the job. Upon his return from the suspension, he was terminated from his employment based on the report that he had been sleeping on the job. (Government Exhibit 2.)

2.f. Applicant completed a security clearance application dated October 8, 2022. In response to Section 13A, Employment Activities, Applicant was asked to provide the reason for leaving the employment activity. In regards to his employment with Company A, Applicant answered, "Terminated/Laid off due to contract ending". Applicant deliberately failed to disclose that he was in fact terminated for sleeping on the job. He also failed to disclose that he had received discipline or a Warning for the above misconduct. (Government Exhibit 1.)

2.i. Section 23 of the same security questionnaire asked the Applicant, "In the last seven years, have you used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance." Applicant answered, "NO." This was a false response. Applicant deliberately failed to disclose that he had used cocaine from the age of 16 or 17, until at least August 2017. (Government Exhibit 1.)

Applicant denied that he deliberately lied in response to these questions on his security clearance application. However, he gives no reasonable explanation as to why they were not answered accurately. (See Applicant Response to Amended SOR.)

Guideline H – Drug Involvement and Substance Misuse

2.d. and 4a. Applicant used cocaine with varying frequency from the young age of 16 or 17 until August 2017. He would snort it with friends or random people. Applicant stated that his use of cocaine would not contribute to any problems. He could go

months or years without using cocaine. Applicant stated that he was never addicted to it, and stopped using it as he no longer associates with anyone who uses drugs. He has no intention of ever using cocaine again. (Government Exhibit 2.)

Applicant denied his cocaine use in his Response to the Amended SOR. There is no reasonable basis for this denial. He provided this information to the investigator during his security clearance background investigation. (Government Exhibit 2.)

Policies

When evaluating an applicant's suitability for national security eligibility, 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. 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, 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." The applicant has the ultimate burden of persuasion to obtain 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 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 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. Two are potentially applicable in this case:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant has incurred delinquent debt that he has been unable to afford to pay or resolve. At this time there is insufficient information in the record to conclude that he is financially stable, or that he can afford his lifestyle, or that he has the financial resources available to handle his financial obligations. There is no evidence in the record to show that any regular monthly payments of any sort are being made toward his debts. In fact, all but one of his delinquent debts remain outstanding. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations 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, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

There is evidence to show that circumstances beyond the Applicant's control, namely the impact of COVID, loss of employment, and a divorce have contributed to Applicant's financial indebtedness. However, since 2022, when he was hired on by his current employer, he has worked full time until December 2023, (when he went on disability) and has done little to nothing to resolve his delinquent debt. All of his delinquent debts, except one, remain outstanding. It is understandable that since going on disability, he has not had sufficient income to resolve his debts. However, his delinquent debt accounts were opened several years before he went on disability, and he did nothing much to resolve them. There has been no good faith effort made to resolve his debts. None of the mitigating conditions apply. This guideline is found against Applicant.

Guideline E - Personal Conduct

The security concern for the personal conduct guideline 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions below:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant was not honest when he answered the questions on his security clearance as to why he was terminated from his previous employment. He also failed to disclose that he has used cocaine at varying frequencies from 1989 to 2021. This conduct shows poor judgment, untrustworthiness and unreliability. Applicant knew or should have known to answer the questions on his application carefully and accurately. Deliberately concealing material information from the government on a security clearance application raises serious questions about one's credibility and trustworthiness. Carelessness shows immaturity and irresponsibility. In either case, none of the mitigating conditions are applicable here, and Applicant does not meet the

eligibility requirement to access classified information. This guideline is found against the 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.

Appellant's criminal history includes multiple arrests for DUI beginning in 2009 and spanning over a period of ten years, until 2019. He remains on probation for his most recent arrest and conviction. This conduct raises the above security concerns.

The guideline in AG ¶ 32 contains several conditions that could mitigate criminal conduct security concerns. None are applicable 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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; -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 history of criminal conduct, includes multiple arrests, charges, and convictions, that start in 2009 and extend over a ten-year period until his most recent arrest and conviction in 2019. Applicant is presently on probation for his most recent conviction. Applicant stated that he has not consumed alcohol for the past three, almost four years. However, he currently remains on probation for DUI. He is commended for his efforts at sobriety so far and is encouraged to continue his rehabilitation. However, more time in sobriety is needed to assure the Government that he will not return to his old ways. At this time, there is insufficient evidence in the record to show that he will remain abstinent. Appellant has failed to mitigate the Government's concerns under the Criminal Conduct guideline.

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

- (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.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns:

- (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;
and
- (2) changing or avoiding the environment where drugs were used.

Both ~~of the~~ mitigating factors are applicable. Applicant has not used cocaine since 2017. He no longer associates with drug users, and he has no intention of ever using cocaine or any illegal drug again. His actions are mitigated.

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 relevant facts and circumstances surrounding this case. Applicant has not addressed his financial delinquencies, he was not candid with the Government about his financial history on his security clearance application, and his long history of criminal conduct including multiple arrests and convictions for DUIs is troubling. Furthermore, he remains on probation for his most recent arrest and conviction. Based upon the totality of this adverse information, insufficient mitigation has been shown. Accordingly, Applicant has not mitigated the Financial Considerations, Personal Conduct, and Criminal Conduct security concerns. The Drug Involvement and Substance Misuse security concern has been mitigated.

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 F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.i.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a. through 2.i.	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraphs 3.a.	Against Applicant
Paragraph 4, Guideline H:	FOR APPLICANT
Subparagraph 4.a.	For 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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge