



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



In the matter of:)	
)	
)	ISCR Case No. 23-02489
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

12/04/2024

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Misuse), Guideline J (Criminal Involvement), and Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 19, 2022. On May 29, 2024, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H, J, and F. The DoD acted under Executive Order (Exec. Or.) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; DoD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (June 8, 2017).

Applicant answered the SOR on June 5, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on July 23, 2024. On July 24, 2024, a complete copy of the file of relevant material

(FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He acknowledged receipt of the FORM on July 30, 2024, and did not provide a response. The case was assigned to me on November 13, 2024.

The SOR and the Answer are the pleadings in the case. FORM Items 3 through 9 are admitted into evidence without objection.

Findings of Fact

Applicant is 34 years old, earned a high school diploma in 2008, and is single. He has two children born in January and March of 2009. He admits all the SOR allegations with the exception of SOR ¶ 1.d, which alleged intent to continue using marijuana in the future. (Item 2; Item 3.)

SOR ¶¶ 1.a and 2.a: The SOR alleged under Guideline H and cross alleged under Guideline J that Applicant sold heroin from about September 2016 until he was arrested and charged with felony narcotic sales in December 2017. In his Answer, Applicant admits the allegations without explanation. He pleaded guilty to felony narcotic sales and was sentenced to ten years in jail, with all but two years suspended and three years of probation. He did not provide sufficient evidence to find he has completed his probation. (Answer; Item 3 at 35; Item 4; Item 5; Item 6.)

SOR ¶¶ 1.b and 1.c: Applicant admits he used marijuana with varying frequency from about May 2015 until at least February 2024, but he denies he intends to continue using marijuana in the future. In about May 2015, Applicant obtained a medical marijuana card to purchase and use marijuana to treat his depression. During his May 2023 security clearance interview with a government investigator, he indicated he would continue using marijuana pursuant to the medical marijuana card. In response to Government interrogatories, he stated he last used of marijuana in February 2024 and denies an intent to continue using marijuana. (Answer; Item 4 at 7-8, 10; Item 5; Item 6.)

Guideline F

SOR ¶¶ 2.a - 2.f: Applicant admits the six alleged financial allegations. He is in arrears on his child support payments (SOR ¶¶ 2.b and 2.c) because he was unable to make payments while he was incarcerated and because the accounts were set up two years after his children were born. When employed, he has been making child support payments through the state garnishment program. The credit reports in the record show the remaining four debts (SOR ¶¶ 2.a, 2.d-2.f) involve delinquent accounts totaling \$2,879. Three accounts have been placed for collection (SOR ¶¶ 2.a, 2.e, 2.f) and another is past due (SOR ¶ 2.d). Applicant discussed the debts during his 2023 security clearance interview, and he cited his incarceration for the delinquencies. The three accounts placed for collection (SOR ¶¶ 2.a, 2.e, 2.f) were utilities for his apartment that went delinquent while he was incarcerated. He never went back to the apartment after it was raided by the police. He did not provide sufficient evidence to show he had taken steps to resolve

these delinquent accounts now that he is reemployed. He has been working since January 2021. Item 5 indicates he was sentenced in January 2020. (Item 4 at 5, 8-9; Item 5; Items 7-9.)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The concern under this guideline is set out in 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.

Applicant’s admissions in his Answer to the SOR and elsewhere in the record are sufficient to raise the following disqualifying conditions under AG ¶ 25:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

The following mitigating conditions are potentially applicable under AG ¶ 26:

- (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.

AG ¶¶ 26(a) and (b) are not established. Applicant appears to have complied with his probation and changed his environment, but he did not provide any evidence aside from his employment history that he had completed his probation. Insufficient time has passed since his felony conviction. Applicant claimed he last used marijuana in February 2024, however provided no explanation for stopping use after at least nine years or how he will treat his medical condition. Given his recent marijuana use, insufficient time has passed to establish a sufficient period of abstinence and demonstrate an intent to abstain from future marijuana use.

Guideline J: Criminal Conduct

AG ¶ 30 expresses the security concern for 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.

The following disqualifying condition is potentially applicable in AG ¶ 31:

(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; and

(c) individual is currently on parole or probation;

Applicant's misconduct is documented in his SCA and by court records. The above disqualifying conditions apply.

The following mitigating conditions are potentially applicable in AG ¶ 32:

(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.

AG ¶¶ 32(a) and (d) do not apply. Applicant's criminal conduct is recent and continues to cast doubt on his current reliability, trustworthiness, judgment, and willingness to comply with laws, rules, and regulations. The above mitigating conditions, individually or collectively, are insufficient to alleviate those concerns given his history of using marijuana and distribution of heroin. While he may have completed his probation, he continued to consume marijuana until at least February 2024. He did not establish evidence of successful rehabilitation and needs a longer record of responsible behavior and compliance with rules, regulations, and the law before his criminal conduct can be considered mitigated.

Guideline F: Financial Considerations

The concern under this guideline 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 following disqualifying conditions are potentially applicable in AG ¶ 19:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's debts are documented in his credit reports and security clearance interview. The above disqualifying conditions apply.

The following mitigating conditions are potentially applicable in 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; and

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

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous, and ongoing, which cast doubt on his current reliability, trustworthiness, and judgment.

AG ¶ 20(b) is not established. Applicant's incarceration was not a condition largely beyond his control. He did not provide evidence to support his assertions that with employment he was doing better financially. He did not provide sufficient evidence that he attempted to establish payment plans for his consumer debts after his release from incarceration. He failed to show he acted responsibly under the circumstances. He is making his payments on his child-support obligations through the state garnishment process.

AG ¶¶ 20(d) is not fully established. Applicant's child-support obligations are enforced by state garnishment, which is a common practice. He has paid his child support through the state when he has had employment. He provided no evidence he had sought repay the other overdue creditors.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines H, J, and F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant

requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guidelines H, J, and F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the concerns raised by his drug involvement and substance misuse, criminal conduct, and financial considerations.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2: Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.d, 1.f:	Against Applicant
Subparagraphs 1.b, 1.c	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale
Administrative Judge