



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



| | | |
|----------------------------------|---|-----------------------|
| In the matter of: |) | |
| |) | |
| |) | ISCR Case No.24-00368 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

02/10/2025

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On May 23, 2024, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F (Financial Considerations), H (Drug Involvement and Substance Misuse), G (Alcohol Consumption), and E (Personal Conduct). The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on June 10, 2024, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on November 5, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 12, 2024, scheduling the hearing for December 4, 2024. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 8, which were admitted into evidence. Applicant testified on his own behalf. The record was left

open until January 3, 2025, for receipt of additional documentation. Applicant offered no exhibits in support of his testimony. DOHA received the transcript of the hearing (TR) on December 16, 2024.

Findings of Fact

Applicant admitted all the allegations in SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 31-year-old employee of a defense contractor. He is a high school graduate, and has been employed with the defense contractor since August of 2022. He is not married, and has no children. (TR at page 11 line 6 to page 12 line 16.) Applicant can attribute much of his financial difficulties to his past drug involvement. He spent about \$15,000 on marijuana and cocaine during the period of his illegal drug use, (TR at page 23 line 6 to page 26 line 4.)

Guideline F - Financial Considerations

1.a. Applicant admits to a past-due debt to Creditor A, as the result of a motor vehicle repossession, in the amount of about \$15,993. He avers that he is paying this admitted debt by way of his pay being garnished, but has offered no documentation in support of his averment. (TR at page 33 line 25 to page 37 line 13.)

1.b. Applicant admits to another past-due debt to Creditor A in the amount of about \$1,969. He avers that he is paying about \$100 towards this admitted debt “whenever . . . [he] can,” but has offered no documentation in support of his averment. (TR at page 37 line 14 to page 39 line 24.)

1.c. Applicant admits to past-due debt to Creditor C in the amount of about \$1,520. He avers that he is paying “roughly \$100 to \$150” towards this admitted, credit card debt, but has offered no documentation in support of his averment. (TR at page 38 line 10 to page 38 line 3.)

Guideline H - Drug Involvement and Substance Misuse & Guideline E - Personal Conduct

2.a. and 4.a. Applicant admits that he used and purchased marijuana during a ten-year period from 2011~2021. During the period of heaviest usage from 2018~2021, Applicant was spending about \$160 a month, or a total of about \$5,700 for marijuana. (TR at page 15 lines 10~20, at page 16 line 1 to page 21 line 6, and at page 24 line 18 to page 26 line 3.)

2.b. and 4.a. Applicant admits that he used and purchased cocaine during a four-year period from 2018~2022. During the period, Applicant was spending about \$200 a month, or a total of about \$9,600 for cocaine. (TR at page 15 lines 21~25, and at page 21 line 7 to page 24 line 17.)

2.c. and 4.a. Applicant admits in September of 2018, he tested positive for both marijuana and cocaine. As a result of this detected drug involvement, Applicant was fired from his job. However, he continued to use both drugs despite being fired. (TR at page 15 lines 1~5.)

Guideline G - Alcohol Consumption & Guideline E - Personal Conduct

3.a. and 4.a. Since 2011, Applicant admits to consuming alcohol excessively, on weekends, drinking as much as twelve beers and ten shots of whiskey. He last binged on alcohol the weekend before his hearing. (TR at page 28 line 24 to page 31 line 19, and at page 46 line 8 to page 48 line 2.)

3.b. and 4.a. In December of 2021, Applicant was arrested for Operating a Vehicle while Under the Influence of an Intoxicant. He no longer drives after his weekend binge drinking sessions. (TR at page 26 line 7 to page 28 line 23.)

Policies

When evaluating an applicant's 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 national security eligibility.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 (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 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. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has admitted to about \$19,482 in past-due debts. In the past, he spent his monies on marijuana and cocaine, instead of addressing his debts. 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:

(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; and

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

None of these mitigating conditions apply. Applicant's financial problems are ongoing. He has a long history of delinquencies. Applicant avers that he is making monthly payments towards these admitted debts, but has offered nothing in support of his averments. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has not been established. Financial Considerations is found against Applicant.

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 and cocaine, that usage ending in December of 2021 and in July 2022, respectively. 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.

None of these mitigating conditions apply. Applicant's past-drug involvement and substance misuse is recent, ending only in July of 2022. He also continued his drug involvement after testing positive in September 2018, which resulted in termination of his employment. Drug Involvement and Substance Misuse is found against 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. Two conditions 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; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder

Applicant had an alcohol-related incident in December of 2021, and continues to binge drink. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Three 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;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

None of these apply. Applicant's alcohol consumption is excessive. The weekend before his hearing he engaged in binge drinking. Alcohol Consumption is found against Applicant.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct 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 or sensitive information.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(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

Applicant has financial difficulties, drug abuse problems, and drinks alcohol excessively. The evidence is sufficient to raise this disqualifying condition.

AG ¶ 17 provides several conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

(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; and

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

None of these mitigating conditions apply. Applicant's disqualifying conditions are continuing as set forth elsewhere in this decision. Personal Conduct is found against 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 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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F, H, G, and E in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations, Drug Involvement and Substance Misuse, Alcohol Consumption, and Personal Conduct security concerns.

Formal Findings

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

| | |
|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a~1.c: | Against Applicant |
| Paragraph 2, Guideline H: | AGAINST APPLICANT |
| Subparagraphs 2.a~2.c: | Against Applicant |
| Paragraph 3, Guideline G: | AGAINST APPLICANT |

| | |
|-----------------------------|-------------------|
| Subparagraphs 3.a. and 3.b: | Against Applicant |
| Paragraph 4, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a: | 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 national security eligibility for a security clearance. Eligibility for access to classified information denied.

Richard A. Cefola
Administrative Judge