



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 23-02891

**Appearances**

For Government:  
Aubrey De Angelis, Esquire  
Department Counsel

For Applicant:  
*Pro se*

02/25/2025

**Decision**

ROSS, Wilford H., Administrative Judge:

Applicant mitigated the security concerns under Guidelines H (Drug Involvement and Substance Misuse), J (Criminal Conduct), and E (Personal Conduct). Eligibility for access to classified information is granted.

**Statement of the Case**

On February 16, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H, J, and E. The action was taken under Executive Order (EO) 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR in writing (Answer) on February 26, 2024, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 12, 2024. The case was assigned to me on May 7, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 13, 2024. I convened the hearing as scheduled on June 5, 2024. The Government submitted Government Exhibits 1 through 3, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through M. His exhibits were also admitted without objection. Applicant requested that the record remain open for receipt of additional documentation. He submitted Applicant Exhibits N through R in a timely fashion, and they were admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 14, 2024.

### **Findings of Fact**

Applicant is 41 years old and married. He has a bachelor's degree in computer science. He has been employed by a defense contractor since 2021 as a software engineer and seeks to obtain national security eligibility and a security clearance in connection with his employment. (Government Exhibit 1 at Sections 12, 13A, and 17; Applicant Exhibits F, I, K, L, and Q.)

#### **Paragraph 1 (Guideline H, Drug Involvement and Substance Misuse)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has used illegal drugs. He admitted all the allegations under this paragraph.

1.a. Applicant admitted that he used marijuana on a fairly consistent basis from approximately January 1995 through March 2023. He stopped using marijuana in March 2023 and stated that he had no future intentions of using marijuana in the future. His wife does not use drugs. He realizes the negative impact continued marijuana use can have on his life. (Tr. 43-52.)

1.b. Applicant admitted that he used methamphetamine from about January 1999 until August 2012. He further stated that this was his drug of choice. As will be discussed under Paragraph 2, below, Applicant was a career criminal until 2012. At that time he began to turn his life around. One of the ways he did that was by stopping methamphetamine use. He expresses a credible intent not to use methamphetamine in the future. (Tr. 52-53.)

1.c. Applicant admitted that he used opioids from about March 2007 to about August 2012. As stated above, he turned his life around beginning in 2012 and illegal opioid use no longer had a place in it. (Tr. 53-56.)

1.d. Applicant admitted that he was arrested three separate times in August 2001 for being under the influence of a controlled substance. On the third occasion he was convicted and sentenced to one year in jail. This was during the period when he was a career criminal. (Government Exhibit 1 at Section 22, Exhibit 2 at 6.)

1.e. This allegation states that the information set forth under allegations 2.b, 2.c, 2.f, 2.g, and 2.h, below, are cognizable under this Guideline. Applicant admitted this allegation.

## **Paragraph 2 (Guideline J, Criminal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in criminal conduct that creates doubt about a person's judgment, reliability, and trustworthiness. He admitted allegations 2.a through 2.f, and 2.h through 2.l, without exception. He admitted part of allegation 2.g, and denied it in part.

The allegations under this Paragraph will be discussed in chronological order:

2.i. In 1998, when a juvenile, Applicant was arrested for burglary and grand theft of firearms. He served six months at a youth center. From that time, until approximately 2016, he was either in prison, on probation, or on parole. (Government Exhibit 1 at Section 22, Exhibit 2 at 5.)

2.k. In 1999, while still a juvenile, Applicant was arrested and charged with theft from a vehicle. (Government Exhibit 1 at Section 22, Exhibit 2 at 6.)

The allegation in subparagraph 1.d occurred in August 2001. Applicant spent one year in jail from 2001 through 2002 because of his conviction. (Government Exhibit 1 at Section 22, Exhibit 2 at 6.)

2.j. Applicant was arrested in December 2002 and charged with unlawful driving or taking of a vehicle. He was convicted and sentenced to two years in state prison. (Government Exhibit 1 at Section 22, Exhibit 2 at 6.)

2.i. While still in prison for the offense set forth in allegation 2.j, above, Applicant was charged with possession of a weapon while incarcerated. As a result of the subsequent conviction, two more years were added to his sentence. (Government Exhibit 1 at Section 22, Exhibit 2 at 6.)

2.h. Applicant was arrested in March 2006 and charged with possession of stolen property and possession of methamphetamine. He was sentenced to 16 months in prison. He served eight months. (Government Exhibit 1 at Section 22, Exhibit 2 at 7.)

2.g. In March 2007, shortly after his release from prison, Applicant was arrested and charged with possession of ammunition, possession of a controlled substance, and possession of an opium pipe. He denied that the opium pipe belonged to him. He served approximately 18 months of a two-year sentence to prison. (Government Exhibit 1 at Section 22, Exhibit 2 at 7.)

2.f. In June 2008, Applicant was arrested and charged with possession of a controlled substance, possession of a smoking device, and carrying a switchblade. He was convicted and sentenced to two years in prison. (Government Exhibit 1 at Section 22, Exhibit 2 at 7.)

2.e. In November 2008, while the above case was pending, Applicant was arrested and charged with assault with a deadly weapon and battery. He was convicted and sentenced to 16 months in prison. He served one year. (Government Exhibit 1 at Section 22, Exhibit 2 at 7.)

2.d. In October 2010, Applicant was arrested for a parole violation and charged with possession of a knife as a dirk or dagger. He was convicted and sentenced to 16 months in prison. (Government Exhibit 1 at Section 22, Exhibit 2 at 7-8.)

2.c. In March 2012, Applicant was arrested for possession of methamphetamine. He was convicted for this offense and allegation 2.b. (Government Exhibit 1 at Section 22, Exhibit 2 at 8.)

2.b. In July 2012, Applicant was arrested and charged with possession of a loaded firearm and possession of methamphetamine. He was convicted and the sentence for the combined offenses was four years in prison. He stated that the time in prison after this conviction changed his life, as further described under Mitigation, below. (Government Exhibit 1 at Section 22, Exhibit 2 at 8, 18.)

2.a. In January 2020, four years after his release from prison, Applicant got in an altercation with a co-worker. He punched this person several times, hurting him. Applicant was not arrested, but was charged with assault by means likely to cause great bodily harm. (Government Exhibit 1 at Section 22.)

Applicant impressed the judge with the changes he had made in his life, and the judge put him on informal, or bench, probation for three years. During those three years he received therapy, took anger management classes, and worked at resolving personal

issues that had been affecting him most of his life. The probation ended successfully and he is not currently on probation. (Tr. 31-33, 56-62; Applicant Exhibit P.)

During this period he received one-on-one therapy with a psychologist. The psychologist's notes are found at Applicant Exhibit M. The therapist also submitted a letter, Applicant Exhibit E. In it he states in conclusion:

I think that he [Applicant] is currently at a point of social, emotional, and cognitive development that is significantly above average compared to other males his same age. This is a remarkable improvement and achievement. In my opinion he is no longer a threat to others but a mature individual with good values, the ability to handle well the stress and difficulties in life and be there for others now that others have been there for him. (Emphasis in original.) (Tr. 33-34.)

### **Paragraph 3 (Personal Conduct)**

The Government alleged in this paragraph that Applicant is ineligible for clearance because he has engaged in activities that involve questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations.

3.a. This allegation states that the information set forth under Paragraph 1, above, is cognizable under this paragraph. Applicant admitted this allegation.

3.b. This allegation states that the information set forth under Paragraph 2, above, is cognizable under this paragraph. Applicant admitted this allegation.

### **Mitigation**

Applicant was, until 2016, a career criminal. He freely admits that fact. He had a difficult childhood with a father who was an alcoholic, and a mother who was a multi-drug abuser. He testified about his life, "By the time I turned 18, my life had been incarceration, drugs. If I didn't like a Group Home, I left it and lived on the streets because, again, the streets, incarceration, better than being home." (Tr. 21-22.)

From then until his last period of imprisonment that began in 2012, he stated, "I kind of just gave up and fell into the lifestyle of incarceration. The lifestyle of the street." (Tr. 23, 38-39; Applicant Exhibits G and H.)

In 2012 Applicant had what can only be called an epiphany and began improving himself. He became a Christian and started receiving an education while in prison. Education continued out of prison. (Tr. 24-30.)

In 2016 he came off probation. He stated about the event, “It was the first time I had been off paper since I was 15 years old. I had never been out more than five or six months. I had never not been incarcerated or been on probation or parole. And, for the first time, I was off.” (Tr. 30.)

Applicant got married in 2018, and was very successful in his education. He graduated from his university in 2022 with the highest GPA in his graduating class, 3.919. He credits his education with helping him turn his life around. (Tr. 34-35; Applicant Exhibits B, E, F, I, K, L, and Q.)

One of Applicant’s instructors also works for his current employer. This instructor lobbied for Applicant with the company. He wrote a letter on Applicant’s behalf. The company hired him knowing about his record. The president of the company submitted a letter on Applicant’s behalf stating, “[Applicant] has always been rated above expectations or outstanding in his performance evaluations. He has not had any security incidents and has been a very reliable and dependable employee.” (Tr. 35-37; Applicant Exhibits A and D.)

Applicant has been involved in helping at-risk youth and instructing future law-enforcement officers. Applicant Exhibit R is a letter from the Chief Deputy Probation Officer of the county where he used to live. This officer states that Applicant spoke to her classes and at juvenile hall. She stated, “As an instructor and a Chief Deputy Probation Officer, I teach students and officers that one must believe offenders have the ability to change. If not, they need to choose another career. [Applicant] exemplifies this belief. I’m very proud of his progress and he is a reminder of why I have chosen this career field.” (Tr. 66; Applicant Exhibit C.)

Applicant stated, “It wasn’t enough to stay out of prison. I wanted to be the person that I could have been had I never gone.” (Tr. 39.)

## **Policies**

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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, these guidelines are applied 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 applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Paragraph 1 (Guideline H, Drug Involvement and Substance Misuse)**

The security concern relating to Drug Involvement and Substance Misuse is set forth 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.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (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.

Applicant used marijuana from 1995 to March 2023. He used methamphetamine and opioids until 2012. Both of the stated disqualifying conditions have application to this case.

The following mitigating conditions under AG ¶ 26 have also been considered:

- (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 used methamphetamine and opioids during the period when he was in and out of prison, stopping in 2012 when he decided to turn his life around. His marijuana use continued until 2023. He credibly testified that he no longer uses any illegal substances. Since he works for a defense contractor and is married to someone who does not use drugs, he has changed his environment for the better. While he did not submit a signed statement of intent, his testimony and other evidence showed someone who has truly changed his attitude about marijuana and can be depended upon not to use it in the future. Looking at the whole person, he has shown that he has mitigated this guideline. Paragraph 1 is found for Applicant.

## **Paragraph 2 (Guideline J, Criminal Conduct)**

The security concerns relating to the guideline for criminal conduct are set out in AG ¶ 30, which states:

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.

AG ¶ 31 describes three conditions that could raise security concerns and may be disqualifying in this case:

(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;

(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

(d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

As stated, and by his own admission, Applicant was a career criminal until 2012. All three of the disqualifying conditions have application to the facts in this case.

The guideline includes four conditions in AG ¶ 32 that could mitigate the security concerns arising from Applicant's alleged criminal conduct. Two have possible application to the facts of 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; 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 has truly turned his life around. This decision can barely touch on the voluminous evidence in the record showing how this man was able to rise above a very challenging childhood and adolescence, followed by an adulthood of crime, to be the person he is today. Faith, education, and the ability of people to see through the gangster he was to the fine and upstanding man he now is. The incident in 2020 was brought about, at least in part, by his not fully committing to the lifestyle he has now chosen. However, he has had successful therapy, he has a good job where he is respected, he is married, and he has friends. What is truly compelling is that a chief deputy probation officer has used Applicant to educate prospective law enforcement officers and juveniles about how a person's life can change for the better. Mitigating conditions ¶ 32(a) and (d) are fully established. Paragraph 2 is found for Applicant.

### **Paragraph 3 (Personal Conduct)**

The security concerns related to the guideline for Personal Conduct are found under ¶ 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.

AG ¶ 16 describes two conditions that could raise security concerns and may be disqualifying 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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

AG ¶ 17 describes four conditions that could mitigate the security concerns raised by the facts of this case:

(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 vulnerabilities to exploitation, manipulation, or duress; 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.

The discussion under Paragraphs 1 and 2, above, apply to this paragraph as well. Applicant has fully mitigated any security concerns under this guideline. Paragraph 3 is found for Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has fully mitigated the security concerns of his prior drug use, criminal record, and related personal conduct. As fully stated elsewhere in this decision, and supported by the evidence, Applicant is an impressive man who has truly turned his life around after a start that would have crushed most people. His conduct has earned him the privilege of being granted national security eligibility.

### **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
Subparagraphs 1.a through 1.e:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT

Subparagraph 2.a through 2.l:

For Applicant

Paragraph 3, Guideline E:

FOR APPLICANT

Subparagraphs 3.a and 3.b:

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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge