



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



In the matter of:

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ISCR Case No. 24-01543

Applicant for Security Clearance

Appearances

For Government: Nicholas Temple, Esq., Department Counsel

For Applicant: *Pro se*

05/16/2025

Decision

Curry, Marc E., Administrative Judge:

Applicant presented insufficient evidence of any progress he has made to resolve his delinquent federal debt. In addition, his illegal drug use spanned several years, he just stopped less than two years ago, and he did not unequivocally pledge to stop using illegal drugs. Under these circumstances, I conclude Applicant has failed to mitigate the security concerns. His application for a security clearance is denied.

Statement of the Case

On October 2, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations, and H (drug involvement and substance misuse), and E (personal conduct), explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

On October 18, 2024, Applicant answered the SOR, denying all the allegations in Paragraph 1 and admitting all the allegations in Paragraphs 2 and 3. He requested a decision based on the evidence in the written record rather than a hearing. On November 20, 2024, Department Counsel prepared a File of Relevant Material (FORM), setting forth the Government's arguments against Applicant's security clearance worthiness. The FORM contains nine attachments, identified as Item 1 through Item 9.

Applicant received a copy of the FORM on January 24, 2025. He was given 30 days to file a response. He did not file a response, whereupon the case was assigned to me on April 2, 2025. After receiving the FORM, I admitted Items 1 through 9 into the record.

Findings of Fact

Applicant is a 38-year-old single man. He has an associate degree, and he has taken a few college courses. (Item 3 at 5) He has been working for a federal government contractor as a software developer since October 2023. (Item 3 at 13) He also owns a business and performs freelance software development work. (Item 3 at 14)

Applicant failed to file, as required, federal and state income tax returns for 2021, 2022, and 2023. As of the date of the SOR, he owed \$27,305 in federal income taxes and approximately \$3,288 in state income taxes. In April 2024, Applicant hired a tax law firm to help him prepare his delinquent tax returns for filing. Also in April 2024, he retained a bookkeeper to help organize his finances and to develop an income tax payment plan. (Item 4 at 10) As of September 2024, the resolution and filing of his income tax returns was "in progress." (Item 4 at 2) There is no additional evidence on file to substantiate this contention.

Applicant attributes his inability to pay his tax debt to cashflow problems that his freelance software development business experienced during the pandemic. (Item 4 at 22) In February 2024, Applicant went on a seven-day vacation out of the country. (Item 4 at 10)

Applicant has been purchasing and using marijuana with varying frequency since 2005. He smokes it in a pipe once or twice per week while at home to relieve stress. He spends approximately \$500 per year on marijuana purchases. (Item 4 at 6) His last use was the day before his subject interview in 2024. (Item 4 at 6) He enjoys marijuana and believes it is safer to use than alcohol. (Item 4 at 9) When asked about stopping during his investigative interview, he said he would continue using marijuana and make a decision to stop if and when required. (Item 4 at 9) He has known since 2005 that marijuana use is illegal at a federal level, regardless of whether it is legal at an individual state level. (Item 4 at 7)

In January 2015, the police stopped Applicant for speeding. A subsequent search of Applicant's car revealed that he had a vaporizer, a type of drug paraphernalia. (Item 4 at 10) Applicant was cited for speeding and possession of drug paraphernalia and was

issued a summons to appear in court. (Item 4 at 10) Applicant did not appear in court and was cited with failure to appear, compelling the court to issue an arrest warrant. (Item 2 at 3) Applicant did not answer the summons because he believed the search was illegal. (Item 4 at 11) At some time in 2024, after the initiation of the security clearance investigative process, Applicant contacted the court and attempted to resolve this matter. By August 2024, Applicant had reached an agreement with the prosecutor whereupon he agreed to pay the citation for possessing drug paraphernalia in monthly increments. (Item 7 at 12) In addition, per the agreement, the court found Applicant guilty of failure to appear, deferring the sentencing conditioned upon him not receiving any traffic violations for the succeeding six months, whereupon the charge would be dismissed.

In 2017, Applicant was arrested and charged with possession of a controlled dangerous substance and use/possession with intent to use drug paraphernalia. (Item 1 at 5) Applicant, as part of a plea bargain, pleaded guilty to the charges and was given a conditional discharge under which the charges were dismissed so long as he was not criminally charged for a year. (Item 4 at 12)

From February 2017 to at least 2018, Applicant used N-dimethyltryptamine (DMT), a hallucinogen, with various frequency. (Item 4 at 4) From 2017 to approximately October 2023, Applicant used and purchased hallucinogenic mushrooms with various frequency. (Item at 4) Applicant no longer uses DMT or hallucinogenic mushrooms and does not intend to use them again unless the use is part of a clinical study. (Item 4 at 4)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny 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 ¶ 1(d) 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. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the ¶¶ totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

The security concern under this Guideline states, “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.” (AG ¶ 18)

Applicant’s failure to file and pay his federal and state income tax returns, and his corresponding income, outstanding tax delinquencies trigger the application of AG ¶ 19(a), “inability to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 19(f), “failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax, as required.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 debt; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant attributes his financial problems to his business' lack of cash flow during the pandemic. However, he failed to elaborate. Moreover, he explained that he had retained both a bookkeeper and a law firm to help organize his finances and resolve the tax delinquencies, but did not provide any substantiating evidence. Absent evidence of financial hardship and proof that he has filed his tax returns and has begun paying the corresponding delinquent taxes, Applicant has not carried the burden. I conclude that none of the mitigating conditions apply.

Guideline H: Drug Involvement and Substance Misuse

Under this guideline, "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." (AG ¶ 24) Applicant's history of drug involvement, together with his drug-related arrests generates the application of AG ¶ 25(a) any substance misuse, and AG ¶ 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia." In addition, Applicant's equivocal response in his 2024 interrogatory answer as to whether he would discontinue marijuana or DMT use triggers the application of AG ¶ 26(g), "expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse."

Given that length of time Applicant has used illegal drugs, the recency of his last drug use, and his failure to unequivocally stop using illegal drugs, I conclude that none of the mitigating conditions apply.

Guideline E: Personal Conduct

Under this guideline, “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 ¶ 15) Contrary to the allegation set forth in SOR subparagraph 2.f, Applicant was not arrested for the charge of possession of drug paraphernalia. Rather, he was issued a citation. This does not minimize the personal conduct security concern, however. Instead, it reinforces the concern that Applicant used marijuana despite, knowing that it remained illegal on a federal level. This concern is amplified by the fact that he repeatedly ignored summons to appear in court in the jurisdiction where the citation was issued. Although none of the disqualifying conditions apply; this conduct constitutes disqualifying behavior, nonetheless.

Neither of Applicant’s drug charges are recent. However, Applicant was subject to a deferred judgment stemming from the 2015 citation as recently as six months ago, and there is no record evidence that he has complied with the terms of the agreement. Under these circumstances, none of the Guideline E mitigating conditions apply and Applicant has failed to mitigate the personal conduct security concern.

Whole-Person Concept

I considered the whole-person concept factors in my analysis of the disqualifying and mitigating conditions, discussed above, and they do not warrant a favorable conclusion.

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 – 1.b:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a – 2.i:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a – 3.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge