



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



In the matter of:)
)
) ISCR Case No. 24-01400
)
Applicant for Security Clearance)

Appearances

For Government: John Hannink, Esq., Department Counsel
For Applicant: *Pro se*

06/17/2025

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate personal conduct, criminal conduct, and drug involvement and substance abuse concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On August 10, 2024, the Defense Counterintelligence and Security Agency (DSCA) Consolidated Adjudications Services (CAS) statement of reasons (SOR) to Applicant detailing reasons why under the criminal conduct, personal conduct, and drug involvement and substance abuse guidelines the DSCA CAS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on September 14, 2024, and elected to have her case decided on the written record in lieu of a hearing. Applicant received the File of Relevant Material (FORM) on December 18, 2024, and interposed no objections to the materials in the FORM. Applicant did not respond to the FORM. The case was assigned to me on February 18, 2025.

Summary of Pleadings

Under Guideline E, Applicant allegedly (a) falsified her electronic questionnaires for Investigations processing (e-QIP) of May 9, 2023, by deliberately failing to disclose (a) her past offenses involving drugs and alcohol; (b) her 2009 burglary and felony possession of drug paraphernalia charges; (c) her voluntary attendance of a drug rehabilitation center associated with her previous methamphetamine use; and (d) her past use of methamphetamines.

Under Guideline J, Applicant allegedly was arrested and charged on multiple occasions between September 2005 and November 2014 with alcohol and drug use violations. Allegedly, most of her charges resulted in convictions, sentencing, and probation; while some were dismissed.

Under Guideline H, Applicant allegedly used methamphetamine and other illegal drugs alleged under Guideline E between 2006 and April 2014. She furnished no attached documentation.

In Applicant's response to the SOR, she admitted each of the allegations covered by Guidelines E, J, and E. She furnished no explanations or clarifications.

Findings of Fact

Applicant is a 40-year-old employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant never married and has two adult children (ages 23 and 21). (Item 3) She earned a clinical training certificate after completing a course in phlebotomy in May 2022. (Item 3) She reported no military service. Since May 2023, Applicant has worked for her current employer as a janitor. (Item 3) Previously, she worked for other employers in various jobs. Applicant reported periods of unemployment in 2017-2019. (Items 3 and 5) After completing an e-QIP, in May 2023, she was granted an interim clearance. (Item 4) Her clearance was subsequently withdrawn following the issuance of the SOR.

Applicant's history of criminal offenses

Between September 2005 and November 2014, Applicant was involved in multiple criminal offenses (mostly alcohol-related), for which she was arrested, charged,

and in all but one case convicted. Most of these charges and convictions were traffic and alcohol-related (11 altogether) and resulted in convictions and sentences ranging from time in jail, to fines, and probation. Only in two of the cases (SOR ¶¶ 1.h, and 1.k) were the charges dropped or dismissed. Most serious among her multiple arrests and charges was her September 2009 arrest and charges of Burglary 2nd degree, felony Possession of Controlled Substance, Possession of Syringe, Under the Influence of a Controlled Substance, and Driving Under the Influence (DUI) (Alcohol/Drugs). Applicant was convicted on the 2009 felony Possession charges and Petty Theft and was sentenced to three years of probation and one year of jail. (Items 5-7)

Based on the evidence produced in the administrative record, Applicant has taken no known remedial actions to correct her judgment lapses associated with her last arrest and conviction in November 2014 for providing liquor to a minor. (Items 2-6) Ordered probation in six of the listed cases (SOR ¶¶ 1.a, 1.b, 1.d, 1.i, 1.l, and 1.n) were not accompanied by any documented evidence of satisfaction of probation conditions.

Use of Illegal Substances

Over the course of eight years (2006-2014) Applicant used drugs controlled by the Controlled Substance Act (21 U.S.C. § 802, *et seq.*) (CSA). Methamphetamine was her drug of choice, and the only drug cited among her multitude of arrests. (Item 5) Methamphetamine is a federally banned drug covered by the CSA. The record does not reflect any post-2014 use of methamphetamine by Applicant. To address her use of illegal drugs, Applicant voluntarily enrolled in a drug rehabilitation program (locations and dates not identified). (Item 5)

Applicant is credited with abstinence of methamphetamines and other illegal drugs for over nine years and no longer associates with anyone involved in illegal drugs of any kind. (item 5)

Applicant's e-QIP omissions

Asked to complete an e-QIP in May 2023, Applicant omitted her criminal arrests covered by SOR ¶¶ 2.a through 2.j and 2.l. (Item 3) In the same e-QIP, she also failed to disclose her felony offense covered by SOR ¶ 2.i. When confronted by an interviewing investigator from the Office of Personnel Management (OPM) in October 2023, she acknowledged all of her cited arrests.

Applicant attributed her omissions to unintentional oversight and her inability to recall the exact details due to their being so many. (Item 5) Given the number and seriousness of her arrests and charges over such a prolonged period of time, her claims of forgetfulness lack both plausibility and credibility. Inferences of deliberate candor lapses are warranted and drawn.

In the same May 2023 e-QIP, Applicant omitted her voluntary admission (locations and dates unidentified) to a rehabilitation facility to address her Methamphetamine issues. (Item 5) She acknowledged her rehab attendance during

routine questioning without evidence of confrontation by the same OPM investigator who interviewed her in October 2023. (Item 5) Applicant's acknowledged rehabilitation attendance was not preceded by any recited confrontation. (Item 5)

Asked to complete a chart covering any prior illegal drug use in interrogatories propounded to her in August 2024, Applicant answered N/A. Her answers are neither plausible nor credible considering her history of methamphetamine use and rehabilitation admissions. Inferences of knowing and willful omission are warranted and drawn. (Item 5)

Policies

By virtue of the jurisdictional principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a right to a security clearance." 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.

Eligibility for access to classified information may only be granted "upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Application approvals 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, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context

of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Criminal Conduct

The Concern: Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question the person's ability or willingness to comply with laws, rules, and regulations. . . . AG ¶ 30.

Personal Conduct

The Concern: 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . . AG ¶ 15.

Drug Involvement

The Concern: The illegal use of controlled substances, to include the misuse of 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.

Burdens of Proof

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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant’s lengthy history of multiple criminal offenses spanning the years of 2005 through 2014. Applicant’s arrest history includes a 2009 burglary and felony /illegal drug possession offense and conviction and 14 traffic and alcohol-related offenses (mostly resulting from arrests for driving without a valid driver’s license). Considered together, these arrests, charges, and single noted felony conviction (resulting from her 2009 burglary and felony /drug possession charges) raise security concerns over whether Applicant’s actions reflect a pattern of misbehavior incompatible with the judgment, reliability, and trustworthiness requirements for gaining access to classified information.

Criminal Conduct concerns

Applicant comes to these proceedings with a lengthy history of criminal arrests, charges, and convictions. To be sure, Applicant’s multi--count 2009 burglary and drug

possession charges and conviction would likely not (standing alone) meet the track record requirements for denying clearances under Guideline J. Historically, the Appeal Board has generally required a track record of criminally related incidents that bear more recency of occurrence than the dated 2009 incident in this record. See ISCR Case No. 95-0731 at 3 (Sept. 1996); ISCR Case No. 94-1081 at 5 (August 1995).

Applicant's multiple arrests, charges, and convictions over an extended number of years (15 in all) are considerable. Based on the evidence produced in the administrative record, one criminal conduct disqualifying condition (DC) is applicable to the developed facts in evidence. DC ¶ 31(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, and trustworthiness," applies to Applicant's situation.

Applicant's series of criminal incidents reflect multiple lapses of judgment and maturity on her part. When considered together in this context, the 15 SOR-covered incidents support a troubling pattern of questionable judgment, untrustworthiness, and unreliability, properly alleged and pursued under Guideline J. In the past, the Appeal Board has addressed multiple criminal offenses stitched together to raise security concerns over an applicant's overall judgment, trustworthiness, and reliability. In ISCR Case No. 03-08475 at 5-8 (App. Bd. Sept. 14, 2007),

Considered together in the context of a pattern-display of lapses in judgment, Applicant's covered actions reflected, in the Appeal Board's judgment in ISCR Case No. 03-08475, an unwillingness to comply with rules and regulations. Other Appeal Board cases involving multiple traffic-related offenses also sustained clearance denials for reasons of demonstrated lack of overall judgment sufficient to raise security concerns over the applicant's cited inability to follow rules and regulations over a prolonged period of years. See ISCR Case No. 11-14899 at 1-3 (App. Bd. April 15, 2015; ISCR Case No. 10-0928 at 4 (App. Bd. March 5, 2012)

Without more time and demonstrated lessons learned from his lengthy history of criminally related incidents over a course of many years (2005-2014), none of the potentially available mitigating conditions under Guideline J are available to Applicant. Although more than 10 years have elapsed since her last criminal offense in 2014, more documented efforts by Applicant to adhere to a demonstrated track record of compliance with rules and regulations are needed to meet established criteria of eligibility to hold a security clearance.

Personal conduct concerns

Applicable to Applicant's e-QIP omissions are DC ¶¶ 16(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." and 16(b), "deliberately providing false or misleading information; or concealing or omitting information,

concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making recommendation relevant to a national security eligibility determination, or other official government representative,” apply to the facts of Applicant’s case.

Applicant’s omissions of her arrests, charges, and convictions (inclusive of her felony arrest and conviction for drug possession), use of the illegal drug methamphetamine, and voluntary drug rehabilitation sessions for methamphetamine use were made knowingly and willfully and represent a pattern of admitted falsification when completing her May 2023 e-QIP. While voluntary disclosures of adverse information are always encouraged, Applicant provided prompt, good faith disclosures only with respect to her prior use of methamphetamines and rehabilitation initiatives. Only when confronted with her prior arrests, charges, and conviction history did she provide full acknowledgements to the interviewing OPM investigator.

Because of Applicant’s methamphetamine drug use acknowledgements, she is entitled to partial mitigation credit of mitigating condition (MC) ¶ 17(a), “the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” Not available for mitigation credit are her acknowledgements attributable to confrontation.

MC ¶ 17(a) has no application, however, to Applicant’s omissions of her arrest history. Acknowledgement of her 2009 felony arrest and conviction and multiple other arrests and charges over an extended period was made only after confrontation by the interviewing OPM investigator.

Drug Involvement concerns

Applicant’s admitted use of methamphetamine over an eight-year period spanning 2006 through April 2014 raises security concerns over judgment and risks of recurrence. On the strength of the evidence presented, two DCs of the AGs for drug involvement apply to Applicant’s situation: DC ¶¶ 25(a), “any substance misuse”; and 25(c), “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of illegal drugs or drug paraphernalia.”

To her credit, Applicant committed to rehabilitation counseling and treatment for her methamphetamine use and has abandoned all involvement with methamphetamine and all illegal drugs. For over nine years, she is credited with remaining abstinent from illegal drugs and exhibits no visible signs or indications in the administrative record of succumbing to any risks or pressures she might encounter to return to illegal drug use in the foreseeable future. Applicant’s assurances of sustained abstinence from illegal drugs (inclusive of methamphetamines) and avoidance of associations with persons involved with illegal drugs are accepted. Her assurances entitle her to the benefits of two MCs of the drug involvement guideline: MC ¶¶ 26(a), “the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is

unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment"; and 26(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 . . . , (2) changing or avoiding the environment where drugs were used . . .

Overall mitigation of Applicant's past use of methamphetamines is established through her credible assurances of over 10 years of sustained abstinence from her use of illegal drugs and avoidance of persons who are involved with illegal drugs (inclusive of methamphetamines).

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of criminally related offenses over a considerable period of years (2012-2024), e-QIP omissions of her multitude of arrests and convictions (inclusive of a felony possession arrest and conviction), and many years of methamphetamine use, when taken together contextually, reflect collective judgment lapses incompatible with her holding a security clearance. While Applicant is entitled to credit for her civilian contributions to the defense industry, her contributions are not enough at this time to overcome her pattern history of criminally related arrests, charges, and convictions, combined with her e-QIP candor lapses.

From a whole-person perspective, Applicant has failed to establish enough independent probative evidence of her overall trustworthiness, reliability, and good judgment required of those who seek eligibility to hold a security clearance or sensitive position. Summarized, more time is needed for Applicant to demonstrate her understanding and commitment to adhering to the rules and regulations placed in force by her state's criminal and civil laws that are covered by Guidelines E, J, and H. Applicant's collective actions to date fall short of what is required to carry her persuasive burden of demonstrating that she meets the minimum eligibility criteria for gaining access to classified and sensitive information.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude criminal conduct and personal conduct security concerns are not mitigated. Applicant's past use of illegal drugs is mitigated. Eligibility for access to classified information is denied.

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:

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
GUIDELINE J (CRIMINAL CONDUCT):	AGAINST APPLICANT
Subparagraphs 2.a-2.o:	Against Applicant
GUIDELINE H (DRUG INVOLVEMENT):	FOR APPLICANT
Subparagraphs 3.a-3.b:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge