



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



In the matter of:)
)
) ISCR Case No. 25-00016
)
Applicant for Security Clearance)

Appearances

For Government: Lauren Shure, Esq., Department Counsel
For Applicant: *Pro se*

03/18/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 22, 2023. On February 21, 2025, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The DCSA acted under Executive Order (Exec. Or.) 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on March 25, 2025, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 4, 2025. Assignment of the case to an administrative judge was delayed when all administrative judges were furloughed from October 1 to November 12, 2025, during a

federal government shutdown due to a lapse in federal funding. The case was assigned to me on January 6, 2026. On January 22, 2026, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted on February 12, 2026. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 8 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses. He submitted Applicant's Exhibits (AX) A and B which were admitted without objection. (The transcript erroneously reflects that AX C was submitted at the hearing.) I kept the record open until February 25, 2026, to enable him to submit additional documentary evidence. He timely submitted AX C through N, which were admitted without objection. DOHA received the transcript of the hearing on February 24, 2026. The record closed on February 25, 2026.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR. His admissions are incorporated in my findings of fact.

Applicant is a 53-year-old welder employed by a defense contractor since May 2010. He has been employed by defense contractors since April 2000. He married in November 1998, divorced in April 1999, married in April 2009, and separated in April 2010. He has no children. He has never held a security clearance. A clearance is not required for his job, but it would enable him to work in secure areas of ships without an escort.

Under Guideline F, the SOR alleges that Applicant is indebted to the federal government for delinquent taxes in the amount of \$11,000 for tax year 2010 (SOR ¶ 1.a) and in the amount of \$11,658 for tax year 2011 (SOR ¶ 1.b), and failure to file a return for tax years 2019 and 2020 (SOR ¶ 1.c). In his response to the SOR, Applicant submitted a tax transcript for tax year 2010, showing that \$8,834 had been written off and \$517 had been paid, resulting in a zero balance (AX A), and a tax transcript for tax year 2011, showing multiple payments and a write-off of \$11,658 (AX B). After the hearing, he submitted tax transcripts for tax years 2019 and 2020, showing that he filed his 2019 and 2020 returns in December 2025 and received refunds for both tax years. (AX C; AX E) All past-due tax returns have been filed, and all tax debts have been satisfied. (AX F through M)

Applicant testified that his tax debts for 2010 and 2011 were incurred when he withdrew money from his 401(k) retirement accounts. He mistakenly thought that the taxes had been deducted when he withdrew the funds. He moved several times and did not know that he owed the taxes until three years later. He testified that the write-offs occurred when he requested that the fees, penalties and interest be abated, and his request was granted. (Tr. 21-26)

Under Guideline E, the SOR alleges conduct which is cognizable under Guidelines G (Alcohol Consumption), H (Drug Involvement and Substance Misuse), and J (Criminal Conduct). Department Counsel explained the rationale for alleging the conduct only under Guideline E as follows:

Mostly because of the length of time, and . . . it seems that Applicant has done what he needs to do to recover from his drug addictions and alcohol addictions. We wanted you to consider it more under the personal conduct broader scope that just the specifics of Guideline J and G or H.

(Tr 15)

The SOR alleges the following instances involving drugs and alcohol:

SOR ¶ 2.a: Applicant received inpatient and outpatient treatment for November 2017 to May 2018, and was diagnosed with severe opioid use disorder, severe cannabis use disorder, mild cocaine use disorder, and mild alcohol use disorder. At the hearing, Applicant testified that he overdosed with heroin laced with fentanyl three or four times in 2016 and 2017 and then asked for help. (Tr. 29-30) In November 2017, he voluntarily entered a drug and alcohol treatment program. His psychiatric evaluation reflects that he voluntarily entered the program, declaring, "I need to get my life back, I'm losing everything." He successfully completed the program in May 2018. (GX 7 (GX 7))

SOR ¶¶ 2.b through 2.e: Use of heroin with varying frequency from about December 2011 to about October 2017, use of cocaine with varying frequency from about October 1988 to September 2017, use of marijuana with varying frequency from about June 1983 through about September 2017, and consumption of alcohol excessively and to the point of intoxication through about October 2017. In Applicant's answer to the SOR, he admitted all the drug and alcohol allegations. At the hearing, he testified that, to avoid relapse, he adheres to a strict regimen of walking every day after work and playing video games with friends during his free time.

Applicant avoids heroin addicts, because heroin "really scares" him, and he is afraid of being around "other people like me." (Tr. 32-34) When asked if his drug addiction was under control, he responded, "No, I'm not in control of anything. I just avoid them. If you avoid the problem and you walk around the problem, the problem doesn't exist." He recognizes that "every day is a slippery slope," but he knows that he cannot afford to go back to his previous behavior. (Tr. 35-36)

Applicant admitted that he uses illegal marijuana "every now and then" for relief of shoulder pain, and he is waiting for marijuana to be legalized for medical purposes. He testified that if he is given a security clearance, he will never use marijuana again. The SOR was not amended to include marijuana use after "about September 2017." This admission is uncharged misconduct and will not be used as a basis for disqualification. However, I have considered it for limited purposes such as assessing credibility; evaluating evidence of extenuation, mitigation, or changed circumstances, and as part of the whole-person analysis. See ISCR Case No. 03-20327 at 4. (App. Bd. Oct.26,2006).

The SOR alleges arrests for the following criminal offenses:

SOR ¶¶ 2.f and 2.g: Violation of two protective orders in November 2015. After the two altercations alleged in SOR ¶¶ 2.k and 2.l, discussed below, Applicant's landlord obtained a protective order to prevent him from returning to the apartment. Applicant violated the protective order by trying to return to the apartment to retrieve his possessions. The charges were dismissed. (GX 8 at 2)

SOR ¶¶ 2.h, 2.i, and 2.j: Assault, assault and battery (two counts) and destruction of property in September 2015. Applicant testified that this incident occurred when he found his landlady's son passed naked out in the bathroom. Applicant and the son "got into it," and then the landlady, a large woman, joined the affray, along with the father and an uncle. The record does not reflect the basis for the charge of destruction of property. The assault and assault and battery charges were dismissed, and the charge of destruction of property was *nolle prosequi*. (GX 4; GX 5; Tr. 44-50)

SOR ¶¶ 2.k and 2.l: Domestic assault and battery (two counts); and felony assault and battery on a police officer, obstruction of justice, and misdemeanor assault and battery in August 2014. Applicant disclosed this incident in his security interview in June 2023. He testified that this incident occurred after he received a telephone call informing him that his father had a heart attack and probably would die. He was with his girlfriend and a friend of his girlfriend, who had given him a drug. For reasons not reflected in the record, the friend of his girlfriend became angry and called the police. When the police arrived, the door was locked. Applicant and his girlfriend were partially clothed and did not answer. The police broke in and arrested Applicant. His girlfriend later accused him of domestic assault and battery. He was convicted of misdemeanor assault and battery and misdemeanor domestic assault and sentenced to six months in jail and a \$9,000 fine. (GX 8 at 1; Tr. 39-40)

SOR ¶ 2.m: Domestic assault and battery in April 2001. Applicant testified that this incident occurred when his then girlfriend, who was intoxicated, began arguing, and she attacked him with a knife. He grabbed her and restrained her. The charge was dismissed. (GX 4 at 10).

SOR ¶ 2.n: Drunk in public in December 1999. Applicant testified that his memory was "vague" about the incident, but he remembered that it occurred when he was drunk, his best friend's girlfriend was thrown to the ground by a police officer for bringing outside food into a bowling alley, and he felt protective and "got into it" with the police officer. (Tr. 55) Court records do not reflect the disposition of this charge. (GX 4 at 10)

SOR ¶ 2.o: Driving under the influence (DUI) and possession of marijuana in January 1997. Applicant testified that he slept in his car after drinking at a bar and was stopped by the police when he was driving home. His blood-alcohol content (BAC) was 0.12 when he was stopped, but it had dropped to 0.08 after they allowed him to sleep in the car. The DUI charge was reduced to reckless driving, and the marijuana charge was dismissed. (Tr. 56) The record does not reflect the disposition of the reckless-driving charge. (GX 2 at 9)

SOR ¶ 2.p: Felony larceny and misdemeanor destruction of property in June 1996. Applicant testified that he and another person were arguing when Applicant accidentally broke the rear window of the other person's vehicle. The other person told the police that Applicant had stolen a radio and some other property from the vehicle. At the hearing, Applicant testified that the other person admitted that the charges were false, and they were dismissed. (Tr. 57-58) Court records reflect that both charges were *nolle prosequi*. (GX 4 at 9)

SOR ¶ 2.q: Obstruction of justice in November 1994. Applicant disclosed this incident in his security interview in June 2023. He testified that he believes the arrest for this offense occurred when he and a friend were playing on railroad tracks, and they began "messaging" with a person who turned out to be a Federal Bureau of Investigation officer. (Tr. 58) Applicant testified he was found guilty of a misdemeanor. (Tr. 60). Court records do not reflect the sentence. (GX 4 at 8).

SOR ¶ 2.r: Assault in September 1991. Applicant testified that this charge arose from a bar fight. He was convicted of misdemeanor assault. The record does not reflect the sentence. (GX 4 at 8)

SOR ¶ 2.s: Arrest for damaging or removing a signal device in April 1991. Applicant testified that he and a friend were playing on the railroad tracks and were accused of tampering with railroad crossing gates by using a piece of wire to make them go up and down. (Tr. 58-59). He was convicted of a misdemeanor. The record does not reflect the sentence. (GX 4 at 7)

Applicant attributed his arrest record to abuse of alcohol, drug use, and being "dope sick," which occurred when "you just really want to go get your fix." He explained that during his addiction, getting high on drugs was "normal," and he became "dope sick" during the times when he did not have the money to buy drugs. (Tr. 51-52)

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* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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* at 531.

Analysis

Guideline F, Financial Considerations

The security 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

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 are potentially applicable:

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

Both mitigating conditions are established. Applicant has filed his past-due tax returns and paid the taxes that were due.

Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15, in pertinent part as follows: "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 following are the relevant disqualifying conditions under this guideline:

AG ¶ 16(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

AG ¶ 16(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 . . . engaging in activities which, if known, could affect the person's personal, professional, or community standing.

AG ¶¶ 16(c) and 16(e) are established by Applicant's admissions and the evidence presented at the hearing.

The following mitigating conditions are potentially applicable:

AG ¶ 17(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;

AG ¶ 17(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

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(c) is not fully established. Most of Applicant's offenses were minor. Many involved people with whom he no longer associates. Many of the offenses occurred under unique circumstances making them unlikely to recur, *i.e.*, when he was under the influence of alcohol, drugs, or both. The offenses occurred more than ten years ago.

There are no bright line rules for determining when conduct is mitigated by the passage of time. The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. See ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). Applicant has mitigated the personal conduct security concerns raised by his prior abuse of alcohol and hard drugs, but he has not mitigated the concern raised by his illegal use of marijuana. He was diagnosed with severe cannabis use disorder in May 2018. The record does not reflect the times or duration of his use of marijuana, but he admitted at the hearing that he continues to use marijuana, knowing that it is illegal.

AG ¶ 17(d) is not fully established. Applicant acknowledged his behavior and obtained counseling. However, he has not continued treatment, and he lacks a support network. I am convinced that he is intensely aware of his need to avoid hard drugs or alcohol. I am satisfied that his excessive use of alcohol and hard drugs are unlikely to recur. However, his use of marijuana is continuing, and his promise to discontinue his marijuana use is conditioned on obtaining a security clearance.

AG ¶ 17(e) is not established. Applicant has continued to use marijuana, knowing that it is inconsistent with obtaining a security clearance and makes him vulnerable to exploitation, manipulation, or duress.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the 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 F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). He was candid and sincere at the hearing.

After weighing the disqualifying and mitigating conditions under Guidelines F and E and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his failure to pay taxes and failure to timely file tax returns. Although many of the personal conduct security concerns are mitigated, Applicant's continued use of marijuana reflects that he is continuing his history of unwillingness to comply with rules and regulations. Thus, I conclude that he has failed to mitigate the personal conduct concerns raised by his use of marijuana.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraphs 2.b and 2.c:	For Applicant
Subparagraph 2.d:	Against Applicant
Subparagraphs 2.e-2.n:	For Applicant
Subparagraph 2.o:	Against Applicant
Subparagraphs 2.p-2.s:	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.

LeRoy F. Foreman
Administrative Judge