



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



In the matter of: )  
)  
) ISCR Case No. 12-10679  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

12/19/2013

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guidelines E, personal conduct, F, financial considerations, G, alcohol consumption, and H, drug involvement. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On July 25, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E, personal conduct, F, financial considerations, G, alcohol consumption, and H, drug involvement. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on October 1, 2013, and requested a hearing before an administrative judge. The case was assigned to me on November 7, 2013.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 14, 2013. I convened the hearing as scheduled on December 5, 2013. The Government offered exhibits (GE) 1 through 11, and they were admitted into evidence without objection. Applicant testified and did not offer any documentary evidence. DOHA received the hearing transcript (Tr.) on December 13, 2013.

### **Findings of Fact**

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

Applicant is 55 years old. He married in 1990 and divorced in 2003. He has four daughters from the marriage. The eldest is 20 years old, and he has triplets age 14. He remarried in March 2012. He has been employed by a federal contractor since 2009. Applicant held a security clearance from about 1989 to 2001. He is a high school graduate and completed two years of vocational school.<sup>1</sup>

Applicant admitted that he owed all 17 delinquent debts alleged in the SOR. The debts total approximately \$12,500 and range from \$30 to \$5,542. None of the debts are paid or resolved.<sup>2</sup>

Applicant failed to file both his Federal and state income tax returns for tax year 2010 until April 2012. He has had a payment plan with the Internal Revenue Service (IRS) for about a year and pays \$50 a month.<sup>3</sup>

Applicant admitted that with varying frequency he used marijuana from 1977 to 2007. He used heroin with varying frequency from 2002 to 2007. He used cocaine with varying frequency from the mid-1990s until 2007. He used crack cocaine with varying frequency from 2002 to 2007.<sup>4</sup>

In about April 2008, Applicant was discharged from a substance abuse treatment facility with a discharge diagnosis, made by a licensed professional counselor and certified addiction counselor, of opiate dependence in early full remission and cocaine dependence in early full remission.<sup>5</sup>

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<sup>1</sup> Tr. 21, 45, 56-57.

<sup>2</sup> GE 10, 11.

<sup>3</sup> Tr. 17-18; GE 8.

<sup>4</sup> Tr. 18-19; GE 2, 9.

<sup>5</sup> GE 7.

In December 2007, Applicant was discharged from a substance abuse treatment facility with a discharge diagnosis, made by a medical doctor, of opiate dependence, cocaine dependence, and alcohol abuse.<sup>6</sup>

In October 2007, the Probate Court of the state where Applicant resided found Applicant to be chemically dependent and ordered him to attend involuntary inpatient treatment.<sup>7</sup>

In April 2007, Applicant left a substance abuse treatment facility prior to completion of a program. He was diagnosed by a certified addiction counselor with heroine dependence, cocaine dependence, both with physiological dependence.<sup>8</sup>

In about 2006, Applicant was pulled over by police. He was in possession of a crack pipe that he used to smoke crack cocaine.

In about August 2004, Applicant was discharged from a substance abuse treatment facility with a discharge diagnosis, by a certified addiction counselor, of opiate dependence and cocaine dependence, both with physiological dependence.<sup>9</sup>

In about November 1999, Applicant was discharged from a substance abuse treatment facility with a discharge diagnosis, made by a certified addiction counselor, of alcohol abuse.<sup>10</sup>

In about 1998, Applicant was charged with possession of marijuana and drug paraphernalia.<sup>11</sup>

In about May 1988, Applicant was convicted of driving under the influence of alcohol (DUI).<sup>12</sup>

Applicant falsified his May 3, 1999, security clearance application (SCA) when he deliberately denied using any illegal drugs in the past seven years. He, in fact, had been using marijuana from 1977 to the date of the SCA, and cocaine from at least the mid-1990s to the date of the SCA. He also deliberately falsified his December 23, 2000 SCA when he denied using any illegal drugs, when he had, in fact, used them as stated

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<sup>6</sup> Tr. 46; GE 7.

<sup>7</sup> GE 7.

<sup>8</sup> GE 7.

<sup>9</sup> GE 7.

<sup>10</sup> GE 7.

<sup>11</sup> GE 6.

<sup>12</sup> GE 6.

above. At his hearing, Applicant stated he did not answer honestly because he was aggravated with his company for requiring him to obtain a security clearance. He acknowledged that he hated his past, so he did not take completion of the SCA seriously.<sup>13</sup>

Applicant falsified his April 13, 2012 SCA, when he deliberately failed to disclose under Section 22 that he had been arrested for possession of marijuana and drug paraphernalia and DUI. Applicant testified that he failed to disclose the information because he thought it only went back ten years. Under Section 23 that asked about his drug use in the past seven years, he disclosed he used illegal narcotics from January 2007 to December 2007. That information was false as he used heroin from 2002 to 2007, marijuana from 1977 to 2007, cocaine from the mid-1990s to 2007, and crack cocaine from 2002 to 2007. Applicant testified that he did not know why he failed to disclose this information. Applicant also deliberately failed to disclose his drug treatment in 2004 and 2008. He testified that he “botched” disclosing his past drug treatment.<sup>14</sup>

In his April 13, 2012 SCA, under Section 26, Applicant deliberately failed to disclose his failure to file both his Federal and state income tax returns for 2010 until April 2012.<sup>15</sup>

Applicant was interviewed by a government investigator on June 11, 2012. During his interview he deliberately denied ever having any alcohol or drug-related criminal charges or arrests, which was false. He stated that he used crack cocaine for the six months preceding November 2007 and had never otherwise used crack cocaine or any other illegal substances not already addressed in his interview. He deliberately failed to disclose that in addition to his 2007 use of crack cocaine, he used cocaine in crack form from 2002 to 2007, and powder cocaine from the mid-1990s to 2007. He testified he thought the inquiry only went back ten years and he misunderstood the question.<sup>16</sup>

Applicant deliberately falsified facts in his July 17, 2013, responses to government interrogatories when he stated that he used marijuana from 1977 to 1998, when in truth he used it from 1977 through 2007. He falsely stated he used crack cocaine once daily for a month before entering rehabilitation, whereas in truth Applicant used crack cocaine from 2002 to 2007, and powder cocaine from the mid-1990s to 2007. Applicant also deliberately provided false information when he stated he used heroine in 2007 only, when in fact he used heroin from 2002 through 2007.<sup>17</sup>

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<sup>13</sup>Tr. 32-36; GE 3, 4.

<sup>14</sup> Tr. 36-38; GE 1.

<sup>15</sup> Tr. 39-40; GE 1.

<sup>16</sup> Tr. 40-42, 50-51; GE 2.

<sup>17</sup> Tr. 43-44; GE 2.

Applicant testified that he deliberately did not disclose the extent of his past illegal drug use during the investigative interview because he wanted to “block it out” of his memory, and he did not want to remember it.<sup>18</sup>

Applicant used illegal drugs after being granted a secret security clearance by the Department of Defense in the early to mid-1990s until approximately 2001.<sup>19</sup> When asked when the last time he used any illegal drug was, Applicant admitted he smoked marijuana in October 2013. After he completed the drug treatment program in December 2007, he continued to occasionally smoke marijuana at parties. He stated he does not like to smoke marijuana, but if it is given to him he smokes it. He admitted he is influenced by other people and after having a couple of beers he will use it. He testified that most of the time he refuses the marijuana. He admitted he was told when he was discharged from the rehabilitation facility to abstain from illegal drug use. He did not. He does not believe he has a current drug problem because he is not using cocaine or heroin. He stated he will not use marijuana in the future.<sup>20</sup>

Applicant admitted that he continues to consume alcohol every other day. The last time he was intoxicated was a month ago. He does not believe he is an alcoholic. Applicant stated he has dyslexia and difficulty comprehending written material. He regrets his past actions.<sup>21</sup>

Applicant was unemployed from May 2006 to January 2008. During this period his mother passed away, and he inherited about \$60,000. He used the money to buy a motorcycle and purchase drugs.<sup>22</sup>

## **Policies**

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 used 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as

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<sup>18</sup> Tr. 52-53.

<sup>19</sup> Tr. 20-25.

<sup>20</sup> Tr. 21-32, 45.

<sup>21</sup> Tr. 28-29, 47.

<sup>22</sup> Tr. 48-50.

the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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 access to classified information. 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following three are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant admits that he owes 17 delinquent debts, which he is unable or unwilling to pay or resolve. The debts total approximately \$12,500 and range from \$30 to \$5,542. He failed to file his 2010 Federal and state income tax returns on time. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established because Applicant's debts are numerous, recent, and remain unresolved. There is no evidence that these debts were due to conditions beyond Applicant's control. AG ¶ 20(b) does not apply. Some of the debts are small. None of the debts are paid or resolved. Applicant did not provide a plan for resolving the delinquent debts. There are no clear indications that Applicant's financial problems are being resolved or under control. Nor is there evidence that he made a good-faith effort to pay or resolve them. AG ¶¶ 20(c) and 20(d) do not apply.

## Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered the disqualifying conditions under Drug Involvement AG ¶ 25 and the following five are potentially applicable:

- (a) any drug abuse;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
- (g) any illegal drug use after being granted a security clearance; and
- (h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Appellant has an extensive illegal drug abuse history dating from 1977 to the present. He held a security clearance from about 1989 to 2001. He attended drug treatment on several occasions. He was last diagnosed in December 2007 by a medical doctor with opiate dependence, cocaine dependence, and alcohol abuse. He was also diagnosed by certified addiction counselors with the same dependencies, but these diagnoses do not fall within the above disqualifying conditions. There is sufficient evidence of Applicant's drug abuse, possession of illegal drugs, and possession of drug paraphernalia to establish the application of AG ¶¶ 25(a), 25(c), 25(d), and 25(g). Applicant continues to use marijuana and alcohol. His last use of marijuana was two months ago and subsequent to applying for a security clearance. He testified he would not use marijuana in the future, which testimony is not credible based on his extensive history of substance abuse I find he failed to clearly and convincingly commit to discontinue drug use by his continuing to use marijuana as recently as two months before his hearing. Applicant completed several drug treatment programs, discontinued



using illegal drugs for a period of time, and then relapsed by using illegal drugs. His most recent treatment program was December 2007, after which he continued to use illegal substances. I find AG ¶ 25(h) applies.

I have considered all of the mitigating conditions under Drug Involvement AG ¶ 26, including the following three:

(a) the behavior happened so long ago, was so infrequent or happened under circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) a demonstrated intent not to abuse any drugs in the future, such as (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

There is insufficient evidence to support the application of any of the above mitigating conditions.

### **Guideline G, Alcohol Consumption**

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

I have considered all of the disqualifying conditions under AG ¶ 22 including:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and

(f) relapse after diagnosis of alcohol abuse or dependent and completion of an alcohol rehabilitation program.

Applicant had a DUI conviction in 1988. He attended inpatient drug and alcohol rehabilitation treatment and was diagnosed by a medical doctor and other certified addiction counselors with alcohol abuse. Applicant continues to consume alcohol regularly and become intoxicated. The above disqualifying conditions apply.

I have also considered all of the mitigating conditions under AG ¶ 23 including the following:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser); and
- (d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant continues to consume alcohol on a regular basis and drink to intoxication monthly. Applicant has a substantial history of addiction. He did not present evidence of a favorable prognosis from any health care providers. He did not provide sufficient evidence to conclude that alcohol is no longer a problem. None of the above mitigating conditions apply.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct;

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging activities which, if known, may affect the person's personal, professional, or community standing.

Applicant has been a heavy drug abuser for 30 years. He repeatedly used illegal drugs while holding a security clearance for many years. He was diagnosed with drug dependency and alcohol abuse. He was convicted of DUI in 1988. He was arrested for drug possession 1998. He unsuccessfully participated in drug and alcohol treatment programs several times. He deliberately lied on three SCAs and during interviews with government investigators. He lied when responding to government interrogatories. He failed to file his Federal and state income tax returns for 2010 on time. The above three disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under 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;

(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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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

Applicant admitted his numerous falsifications and all of his drug and alcohol issues. His falsifications are extensive and recent. He used drugs for years while holding a security clearance. Even after completing his most recent SCA in 2012, he continued to use illegal drugs. None of the above mitigating conditions apply.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E, F, G, and H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 55 years old. He has numerous delinquent debts that remain unpaid. He used illegal drugs for many years, including while holding a security clearance. He continued to use drugs after completing drug treatment and used marijuana as recently as two months ago. He repeatedly lied on his SCAs and to government investigators about his background. Overall, the record evidence leaves me with substantial questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the personal conduct, financial considerations, alcohol consumption and drug involvement guidelines.

### 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 H:	AGAINST APPLICANT
Subparagraphs 1.a-1.k:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT

Subparagraphs 2.a-2.c	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a-3.l	Against Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraphs 4.a-4.r:	Against Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge