



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00667
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

09/11/2014

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations, criminal conduct, drug involvement, or the personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 7, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, J, H, and E. DOHA acted under Executive Order (EO) 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 May 6, 2014, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of

Relevant Material (FORM) on June 10, 2014. The FORM was mailed to Applicant who received it on June 24, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted a written response to the FORM dated July 1, 2014, which was admitted into evidence without objection as Applicant exhibit (AE) A.<sup>1</sup> The case was assigned to me on August 11, 2014.

### Findings of Fact

In Applicant's answer to the SOR, regarding the Guideline F allegations, he admitted SOR ¶¶ 1.a – 1.c, 1.e – 1.f, 1.j, and 1.l. He denied the remaining Guideline F allegations. He admitted all the Guideline J and H allegations. With regard to the Guideline E allegations, Applicant admitted SOR ¶¶ 4.a – 4.d and 4.f. He denied ¶ 4.e. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 34 years old. He is not married, but has two children. He has worked for his current employer, a defense contractor, since February 2013. He received a certificate from a technical training school in September 2009. He was unemployed from May 2012 to February 2013. He served on active duty in the Navy from 1999 to 2001 when he received an under other than honorable conditions discharge because of a positive urinalysis test for marijuana. He held a security clearance at the time.<sup>2</sup>

The SOR lists 12 delinquent debts: three telecommunication debts in the amounts of about \$1,010, \$1,159, \$527 (SOR ¶¶ 1.a, 1.c, and 1.d); two student loan debts in the amount of \$3,359 and \$6,636 (SOR ¶¶ 1.e and 1.f); four medical-related debts in the amount of \$27,208, \$2,261, \$2,086, \$220 (SOR ¶¶ 1.g - 1.i, and 1.k); two automobile-related debts in the amount of \$1,200 and \$50 (SOR ¶¶ 1.j and 1.l); and one credit card debt in the amount of \$402 (SOR ¶ 1.b). These debts are supported by credit reports from September 2013, July 2013, and March 2014.<sup>3</sup>

Applicant's admitted conduct raised in the SOR concerning Guidelines J and H includes: (1) selling crack cocaine for profit from about June 2005 to December 2005 and using cocaine from June 2005 to November 2010 (SOR ¶¶ 2.a, 3.a, and 3.d); (2) being convicted of selling controlled substances and sentenced to three years' probation in 2005 or 2006 (SOR ¶¶ 2.b, 3.a); (3) being convicted of battery and sentenced to three years' probation in 2006 (SOR ¶ 2.c); (4) being convicted of driving on a suspended license in September 2008, and placed on probation, which was revoked and extended three years in June 2009 (SOR ¶ 2.d); (5) being arrested for trespass and refusing to leave private property in December 2008 where charges were

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<sup>1</sup> AE A was not presented to me before I issued my original decision in this case dated August 28, 2014. Consequently, I vacated that decision on September 10, 2014, and am issuing this decision after having fully considered the contents of AE A.

<sup>2</sup> Items 6-8, 10.

<sup>3</sup> Items 1, 11-12.

dismissed (SOR ¶ 2.e); (6) being arrested for driving on a suspended license in May 2009 and January 2010 (SOR ¶¶ 2.f, 2.g); (7) being charged with hit and run property damage in 2010 (SOR ¶ 2.h); (8) being arrested and convicted for driving under the influence (DUI) in June 2011 (SOR ¶ 2.i); (9) being arrested for public intoxication in 2011 or 2012 (SOR ¶ 1.k); (10) in 2001, using marijuana while serving in the U.S. Navy and holding a security clearance (SOR ¶¶ 3.b, 3.c); (11) using crystal methamphetamine until about February 2006 (SOR ¶ 3.e).

The personal conduct allegations include: (1) in June 2001, being discharged from the Navy under other than honorable conditions (SOR ¶ 4.a); (2) using marijuana while holding a security clearance (SOR ¶ 4.b); (3) failing to provide correct information while completing his security clearance application in June 2013 concerning his past use of cocaine (SOR ¶ 4.c), his past criminal charges (SOR ¶ 4.d), his probation status (SOR ¶ 4.e), and whether he was ever charged with an offense involving drugs or alcohol (SOR ¶ 4.f).

During the course of Applicant's security clearance review, he was interviewed by an investigator who questioned him about all the delinquent debts listed in the SOR. Applicant admitted all the debts and also stated he had no resources to pay the debts. He stated he would "get help from a debt consolidation service" to address the debts. There is no evidence Applicant made arrangements with any debt consolidation service, or has paid any of the debts. All the debts remain outstanding.<sup>4</sup>

Applicant's drug use started when he was in the Navy in 2001. He smoked marijuana at a party and was later required to take a command directed urinalysis test, which came back positive. Applicant held a security clearance at the time of this use. He was discharged from the Navy under other than honorable conditions because of his drug use.<sup>5</sup>

In 2005, Applicant was using and selling cocaine. He sold the drugs out of his aunt's house in a known drug area. He sold drugs daily because he needed money. He was arrested by the police and later pleaded guilty to selling cocaine and was placed on probation for three years. He also used crystal methamphetamine from June 2005 to February 2006. It was readily available in the same area where he was selling cocaine. He was using methamphetamine when he assaulted and battered a public bus driver. He was convicted of this offense and placed on three years' probation. In April 2009, he voluntarily entered a one-week drug treatment program; however, the record does not reflect any information about his diagnosis or recovery plan.<sup>6</sup>

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<sup>4</sup> Items 8, 11, 12.

<sup>5</sup> Items 7, 8, 10.

<sup>6</sup> Items 4, 8.

Applicant admitted that he was charged and convicted of driving on a suspended license in May 2008. In December 2008, he was arrested for criminal trespassing at the residence of his children's mother. He got into a scuffle with the property's security guard who called the police. In 2010, he was arrested for driving on a suspended license. He admitted to this offense (the SOR lists two driving on suspended licenses offenses (SOR ¶¶ 2.f and 2.g), but the evidence only supports one allegation, therefore, SOR ¶ 2.g is concluded for Applicant). In May 2010, he left the scene of an accident when he abandoned his vehicle on the highway. He was charged and convicted. In November of 2010, Applicant was using cocaine at his house when he was involved in an altercation with a relative. The police were called and he was later arrested for being under the influence of drugs. He was convicted and sentenced to probation. In June 2011, he was arrested for DUI when he was driving on the interstate highway when he was stopped by law enforcement. He was given a Breathalyzer test, which registered a blood alcohol content of .081 per cent. He pleaded guilty and was placed on probation for three years. In November 2011, Applicant was waiting at a bus stop and fell asleep. Earlier he consumed a large amount of alcohol. The local police drove by and told him he could not lay there. They noticed his intoxicated state and arrested him.<sup>7</sup>

On June 14, 2013, Applicant completed his security clearance questionnaire. He answered "no" to a question concerning whether he had used any drugs in the last seven years. He answered "yes" to the question concerning whether he had been charged, convicted, or sentenced regarding a crime within the last seven years. He gave the details for his 2005 conviction for selling drugs, but he failed to list any additional crimes. He was also asked whether he had ever been or was currently on probation. He answered "yes" to this question in one place on the application and "no" to this question when he was asked about any other offenses that may have resulted in probation. He was also asked if he ever was charged with an offense involving alcohol or drugs to which he answered "no." As the above-stated facts reveal, his answers were not true. In July 2013, during his personal subject interview, it was only after the investigator specifically confronted Applicant with his other criminal charges that he acknowledged them, except for the June 2011 DUI, which he volunteered to the investigator. Applicant claimed that his failure to affirmatively acknowledge the other criminal charges was because he did not have the information available to him at the time he completed the application and that any incorrect information on his security clearance application was an unintentional error on his part.<sup>8</sup>

In his FORM response, Applicant stated that he is working with his sister to get his finances in order. Concerning his past criminal conduct, he acknowledged his past actions, but has now surrounded himself with "positive people" and lives for his kids. He also stated that he no longer uses drugs or alcohol and that he voluntarily attends

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<sup>7</sup> Items 4, 8.

<sup>8</sup> Items 4, 8.

Alcoholics Anonymous (AA) meetings. He did not present any documents supporting these assertions.<sup>9</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 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.

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 that an 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.

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

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<sup>9</sup> AE A.

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**

AG ¶ 18 expresses the security concern for financial considerations:

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 them under AG ¶ 19 and the following potentially apply:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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.

Applicant's debts are recent and remain unresolved. He did not provide sufficient evidence to show that the debts are unlikely to recur. His inaction toward these debts casts doubt on his reliability, trustworthiness, and good judgment. I find mitigating condition AG ¶ 20(a) does not apply. Applicant provided evidence he was unemployed for about nine to ten months, which contributed to his financial problems. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. He stated he would contact a debt consolidation service, but failed to present evidence that he did so. I find AG ¶ 20(b) partially applies. Applicant failed to present evidence of financial counseling, although he is seeking assistance from his sister. There is no clear evidence that Applicant's financial problems are being resolved or under control because the debts remain unpaid. There is no evidence that he has made a good-faith effort to pay the remaining debts. I find AG ¶¶ 20(c) and 20(d) do not apply.

### **Guideline H, Drug Involvement**

AG ¶ 24 expresses the drug involvement security concern:

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.

I have considered all of the evidence in this case and the disqualifying conditions under drug involvement AG ¶ 25 and found the following relevant:

- (a) any drug abuse;
- (b) testing positive for any drug use;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) any drug use after being granted a security clearance.

Between 2001 and 2010, Appellant illegally used marijuana, cocaine, methamphetamine, and sold cocaine for profit on a number of occasions. He tested positive for marijuana while holding a security clearance. I find that all the above disqualifying conditions apply.

I have considered all of the evidence in this case and the mitigating conditions under drug involvement AG ¶ 26 and found the following relevant:

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

(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.

Applicant's admitted drug use of marijuana, cocaine and methamphetamine during periods from 2001 to 2010 was frequent. His period of abstinence is insufficient to demonstrate his intent not to use illegal drugs in the future. Although more than four years have passed since his last drug use of cocaine in 2010, his overall behavior of drug use and distribution for profit cause me concern. He did not establish that recurrence is unlikely. His past actions, particularly his conscious decision to sell drugs for profit, and his use in 2010 after attending a drug treatment program, cast doubt on his current reliability, trustworthiness, and good judgment. It is too soon to tell whether his use will recur. He did not present sufficient evidence to establish that he completed a drug treatment program, nor did he present evidence of a favorable diagnosis. AG ¶ 26(a) partially applies, but AG ¶ 26(d) does not apply.

#### **Guideline J, Criminal Conduct**

The security concern relating to the guideline for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case. The following are potentially applicable:

(a) a single serious crime or multiple lesser offenses; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant's drug use and distribution, his driving with suspended license offenses, his hit and run offense, his criminal trespassing and battery charges, his public intoxication charge, and his DUI constitute criminal action on his part. I find that both disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and considered the following relevant:



(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's most recent offense was in June 2012. He has shown a steady pattern of criminal activity since 2001. There has not been a sufficient amount of time to determine whether his rehabilitative efforts will be successful. His past criminal behavior casts doubt on his reliability, trustworthiness, and good judgment. Under these circumstances, his last criminal act is not sufficiently attenuated after considering his behavior in its totality. AG ¶ 32(a) does not apply. Applicant failed to present sufficient evidence of his rehabilitative efforts to justify full mitigation. AG ¶ 32(d) does not apply.

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

AG ¶ 15 expresses the personal conduct security 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 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 in this case. The following disqualifying conditions are 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; and

(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 person may not properly safeguard protected information; 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 in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant used marijuana while holding a security clearance in the Navy. He was unfavorably discharged because of his actions (since his unfavorable discharge was based upon his positive drug test, the underlying conduct for both SOR ¶¶ 4.a and 4.c is the same and SOR ¶ 4.a will be concluded for Applicant). He also failed to list many of his criminal charges on his security clearance application. He claims he did not have the information available at the time he completed the application. He deliberately failed to list his prior use on his security clearance application in 2013. AG ¶ 16(a) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(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.

I considered all of the facts and circumstances surrounding Applicant's falsifications. Falsifying information on a security clearance application is not a minor offense and doing so casts doubt on his trustworthiness, reliability, and good judgment. Although several years have passed since Applicant's discharge from the Navy, he has more recently engaged in unacceptable behavior that is similar to his past actions. The passage of time has not changed his behavior. AG ¶ 17(c) does not 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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's past military service. However, he has not shown a track record of financial stability. The record lacks evidence that Applicant has made an overall good-faith effort to resolve his debts. He also engaged in drug-related and other criminal conduct over a long period of time. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations, Guideline J, criminal activity, Guideline H, drug involvement, and Guideline E, personal conduct.

### **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: Subparagraphs 1.a – 1.l:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline J: Subparagraphs 2.a – 2.f: Subparagraph 2.g: Subparagraphs 2.h – 2.k:	AGAINST APPLICANT Against Applicant For Applicant Against Applicant
Paragraph 3, Guideline H: Subparagraphs 3.a – 3.e:	AGAINST APPLICANT Against Applicant
Paragraph 4, Guideline E: Subparagraph 4.a: Subparagraphs 4.b – 4.f:	AGAINST APPLICANT For Applicant 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge