



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



In the matter of:

ISCR Case No. 15-00239

Applicant for Security Clearance

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel

For Applicant: *Pro se*

11/22/2016

**Decision**

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On October 30, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines J and E. DOHA acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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 November 24, 2015, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on February 4, 2016. The FORM

was mailed to Applicant who received it on March 11, 2016. The documents in the FORM included the pleadings (Items 1-2) and evidence (Items 3-5). Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any additional evidence or object to the Government's evidence. Items 3-5 are admitted into the record. The case was assigned to me on November 2, 2016.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted SOR ¶¶ 1.a – 1.r. He denied SOR ¶ 2.b (he failed to respond to SOR ¶ 2.a, which was a cross allegation of SOR ¶¶ 1.a – 1.r). The 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 57 years old. He is married and has one adult child. He has worked for his current employer, a defense contractor, since February 2014. Before 2014, he worked in the private sector. He has never held a security clearance before.<sup>1</sup>

Applicant's admitted conduct raised in the SOR concerning Guidelines J includes:

- (1) pleading guilty to driving on a suspended license in July 2007 (SOR ¶ 1.a);
- (2) being arrested for driving on a suspended license, and other related charges, in June 2006 (SOR ¶ 1.b);
- (3) being charged with driving under the influence (DUI) of alcohol/controlled substance and other related charges in June 2004 (SOR ¶ 1.c);
- (4) being charged with DUI and other related charges in November 2003 (SOR ¶ 1.d);
- (5) being charged with DUI of alcohol/controlled substance and other related charges in September 2003 (SOR ¶ 1.e);
- (6) being charged with under the influence of a controlled substance in July 2002 (SOR ¶ 1.f);
- (7) being charged with possession of a controlled substance in June 2002 (SOR ¶ 1.g);
- (8) being charged with DUI of alcohol/controlled substance in January 2002 (SOR ¶ 1.h);
- (9) being charged with under the influence of a controlled substance in November 2001 (SOR ¶ 1.i);
- (10) being charged with rape of spouse by force, fear, or threat in January 1994 (SOR ¶ 1.j);
- (11) being charged with contempt of court in October 1991 (SOR ¶ 1.k);
- (12) being charged with assault with the intent to rape, spousal abuse, and possession of amphetamines in August 1988 (SOR ¶ 1.l);
- (13) being charged with possession of a controlled substance in March 1988 (SOR ¶ 1.m);

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<sup>1</sup> Item 1.

- (14) being charged with sale and transporting marijuana/hashish in June 1986 (SOR ¶ 1.n);
- (15) being charged with parole violation and transporting marijuana in April 1983 (SOR ¶ 1.o);
- (16) being charged and convicted of felony credit card fraud and sentenced to three years' incarceration in January 1981 (SOR ¶ 1.p);
- (17) being charged with grand theft of personal property in October 1979 (SOR ¶ 1.q);
- (18) being charged with burglary in March 1977 (SOR ¶ 1.r).

The personal conduct allegations included cross alleging all the Guideline J allegations, and deliberately failing to provide correct information while completing his security clearance application in March 2014 concerning past felony offenses and offenses involving drugs and alcohol by failing to disclose the offenses listed in SOR ¶¶ 1.c – 1.i and 1.l – 1.p.

In April 2014, during the course of Applicant's security clearance review, he was interviewed by an investigator who questioned him about all the criminal charges listed in the SOR. Applicant admitted all the criminal acts except that he could not recall the two marijuana charges in 1983 and 1986. He admitted using methamphetamines from 1983 to 1989, and again from 2001 to 2003. He claims that he no longer uses illegal drugs and has no intent to do so in the future. He did not present documents to support his recovery. Applicant recalled in detail the events that led to his conviction for felony credit card fraud where he served a two-year sentence in state prison. He failed to list this offense on his security clearance application. He also failed to list his DUI and possession of controlled substance offenses. In his SOR answer, he claimed that he listed the criminal information that he had on a DOJ printout and from his memory.<sup>2</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.

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<sup>2</sup> Items 3-5.

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 applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **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.

From 1977 to 2007, Applicant has been arrested and often convicted of numerous criminal offenses. 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 2007. He has shown a steady pattern of criminal activity since 1977. 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 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.

The same rationale that applied to the Guideline J concerns, also applies here. AG ¶ 16(c) applies. He also failed to list many of his criminal charges on his security clearance application. He claims he put the information on his security clearance application that was listed on a DOJ printout that he possessed and from what he remembered of the incidents. I do not find it credible that he did not remember a felony for which he was convicted and sentenced to two years' prison time, which he served. He deliberately failed to list his felony charges, as well as his alcohol and drug charges on his security clearance application in 2014. 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; and

(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.

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. He presented no evidence to support his assertion that he has stopped using drugs, nor evidence that he received counseling. Although nine years have passed since his last criminal offense, his extensive past criminal history over the preceding 30 years casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 17(c) and 17(d) do 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. Applicant engaged in criminal conduct over a long period of time. 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 J, criminal activity 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 J:	AGAINST APPLICANT
Subparagraphs 1.a – 1.r:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the 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