



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-04036

Appearances

For Government: Adrienne Driskill, Esquire, Department Counsel

For Applicant: *Pro se*

June 29, 2018

Decision

ROSS, Wilford H., Administrative Judge:

Applicant used crystal methamphetamine with varying frequency from 1999 to 2014. He has over \$28,000 in past-due debts that he cannot, or will not, resolve. Applicant falsified government questionnaires in 2004 and 2015 concerning his drug use, criminal activity, and past-due debts. Based on a review of the pleadings, testimony, and exhibits, national security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on September 16, 2015. (Government Exhibit 1.) On March 24, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations), H (Drug Involvement), and E (Personal Conduct). 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.¹

Applicant answered the SOR in writing (Answer) on April 20, 2017, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 16, 2017. The case was assigned to me on May 16, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 12, 2017. I convened the hearing as scheduled on August 24, 2017. The Government offered Government Exhibits 1 through 7, which were admitted without objection. Applicant testified on his own behalf, called one additional witness, and submitted Applicant Exhibits A and B. Applicant's exhibits were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 1, 2017.

Findings of Fact

Applicant is a 36-year-old technical instructor. He is married with two children. He is seeking to retain a security clearance in connection with his work with the DoD.

Applicant served on active duty with the Navy from March 2005 through March 2013, when he obtained an Honorable Discharge. He was unemployed for two years before obtaining work with his current employer in May 2015. (Government Exhibit 1 at Sections 13A and 15; Applicant Exhibit A.)

Paragraph 1 (Guideline F – Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has a history of past-due indebtedness that can raise questions about his reliability, trustworthiness, and ability to protect classified information.

Applicant admitted owing all fifteen debts set forth in the SOR (subparagraphs 1.a through 1.o). The total amount of money Applicant is alleged to owe is approximately \$28,574. The existence and amount of the debts is documented by credit reports dated October 15, 2015; June 3, 2016; and May 15, 2017. (Government Exhibits 5, 6, and 7.) (See Government Exhibit 4.)

As stated, when Applicant left the Navy he was unemployed for two years. This had some impact on his ability to pay his bills. However, also during that same time period

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines.

(2013 through 2015) Applicant was using drugs. Applicant admitted, “Then with the money I did have, I started to purchase drugs with it.” (Tr. 39.)

Applicant stated that he attempted to set up payment arrangements with some of his creditors, but could not keep up the payments. He also has thought about bankruptcy or debt consolidation, but has not taken any concrete steps in those directions. Applicant has not made any payments on his past-due indebtedness, and has no current plans to pay any of his past-due indebtedness. (Tr. 21, 41-44.)

Paragraph 2 (Guideline H – Drug Involvement and Substance Misuse)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has used illegal drugs. Applicant admitted all three allegations under this paragraph.

2.a and 2.b. Applicant purchased and used crystal methamphetamine at least 15 times. He first used crystal methamphetamine in 1999 when he was in high school. He next used the drug during the 2003-2005 time frame. This was after his first wife delivered a still-born child and Applicant used drugs as a coping mechanism. (Tr. 24-26; Government Exhibit 3 at 6.)

Applicant did not use illegal drugs when he was in the Navy. He started using crystal methamphetamine again in the December 2013-May 2014 time frame. This was when he was unemployed. Applicant is uncertain how often he used the drug. He testified, “Probably maybe three, four times a month, if that.” Here again Applicant was using drugs as a method for managing problems in his personal life. (Tr. 26-29.)

2.c. Applicant’s second wife left him when Applicant was using crystal methamphetamine in 2013-2014. Applicant’s parents tried to help him through his drug use. On May 1, 2014, Applicant’s parents called the police because Appellant had been using and was out of control. He was arrested for being under the influence of a controlled substance and placed on a three-day psychiatric hold at a local hospital. Afterwards, he was ordered by the court to attend an outpatient treatment program in order to receive a deferred entry of judgment. Applicant entered the treatment program on August 5, 2014, and successfully completed the program on December 17, 2014. Applicant testified that he has been clean and sober since the day he was arrested. He also testified that he no longer associates with people connected to his drug use. (Tr. 19-20, 29-33; Government Exhibit 3, Exhibit 4 at 10-11; Applicant Exhibit B.)

Paragraph 3 (Guideline E – Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that shows poor judgment, untrustworthiness or unreliability. Applicant admitted all the allegations under this paragraph.

3.a. In early 2015 Applicant was offered a job by his former supervisor in the Navy. In connection with that job offer Applicant filled out an e-QIP on February 27, 2015. (Government Exhibit 1.) Section 22 of the questionnaire asked Applicant about his police record, specifically, "Have you [Applicant] EVER been charged with an offense involving alcohol or drugs?" (Emphasis in original.) Applicant answered, "No." This was a false answer to a relevant question about Applicant's arrest record. In fact he had been arrested for being under the influence of crystal methamphetamine. Applicant admitted that he answered this question, "No," because he did not think the Government was going to find out, and he was scared if he told the truth he would not get the job. (Tr. 21, 55-57.)

3.b Section 23 of the questionnaire asked Applicant about his drug use history. First of all, that section asked whether Applicant had used controlled substances during the previous seven years. Applicant stated, "No." This was a false answer to a relevant question concerning Applicant's drug use history, since he had used crystal methamphetamine as described above. Once again, Applicant admitted his intentional falsification of this questionnaire during his testimony at the hearing. Applicant stated that his decision to put down a false answer was because he wanted the job that was offered to him, and he felt the Government would not find out. (Tr. 21, 57-58.)

3.c Section 23 of the same questionnaire also asked Applicant if he had been involved in the illegal purchase of drugs. Once again Applicant answered, "No." This was a false answer to a relevant question about his drug history. In fact Applicant had purchased crystal methamphetamine during the 2013-2014 period. Once again, he put down a false answer because he wanted the job, and felt the Government would not find out about his drug use. (Tr. 21, 33, 57-58.)

3.d Section 23 of the same questionnaire also asked Applicant, "Have you EVER been ordered, advised, or asked to seek counseling or treatment as a result of your illegal use of drugs or controlled substances?" Once again, Applicant answered, "No." which was a false answer to a relevant question about his drug history. As stated, in fact, Applicant had attended a court-mandated drug-counseling program, which had ended less than three months before he filled out the questionnaire. Since he did not admit the drug use, he could not admit the treatment on his questionnaire either. (Tr. 21, 57-58.)

3.e Section 26 of the same questionnaire concerned Applicant's financial record. He was asked if, in the seven years before the date he filled out the questionnaire, he had bills or debts turned over to a collection agency, had an account charged off for failing to pay as agreed, and whether he was at that time 120 days delinquent on any debts? Applicant answered all three questions, "No." These were false answers to relevant questions about his financial status. Applicant testified that he did not think his debt situation was a big deal, but he also admitted intentionally falsifying his responses. (Tr. 19, 58.)

Applicant was subsequently interviewed by an investigator from the Office of Personnel Management on December 21, 2015. During that interview, Applicant

continued to maintain the false answers concerning his debts and drug use, described above, until he was confronted by the interviewer with the truth. (Tr. 59-60; Government Exhibit 4.)

3.f. During the enlistment process to join the Navy Applicant filled out a Security Clearance Application on July 7, 2004. (Government Exhibit 2.) Section 27 of that application concerns Applicant's use of illegal drugs. Specifically, Applicant was asked whether, in the previous seven years, he had illegally used controlled substances. Applicant answered, "No." This was a false answer to a relevant question about Applicant's drug use, since he had in fact used crystal methamphetamine in 1999, and 2003-2004. Applicant testified that he had been told by his recruiter to answer this question falsely. His testimony was credible. (Tr. 33-37.) (See Tr. 72.)

Mitigation

Applicant's supervisor testified on Applicant's behalf. He has known Applicant since about 2010, when Applicant was still on active duty. The witness stated that Applicant is a superb worker in a demanding job. He fully supports Applicant retaining his security clearance. (Tr. 62-73.)

Policies

When evaluating an applicant's national security eligibility for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F – Financial Considerations)

The security concern relating to the guideline for Financial Considerations 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant, based on the evidence, had fifteen delinquent accounts that he could not or chose not to resolve. These debts have been in existence for a considerable period of time. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The evidence does not establish that any of the above mitigating conditions apply to Applicant. With regard to AG ¶ 20(b), Applicant was unemployed for two years between 2013 and 2015. However, he used money he made during that period to buy illegal drugs. In addition, he had been employed over two years as of the time of the hearing and had not paid any of the past-due debts. He failed to submit any evidence that would tend to support any of the other mitigating conditions. There is no basis for me to find that Applicant has mitigated the security concerns of his financial situation. Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline H – Drug Involvement and Substance Misuse)

The security concern relating to Drug Involvement and Substance Misuse is set forth in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. §802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above. (Emphasis in original.)

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia.

Applicant has a history of purchasing and using illegal drugs. Applicant repeatedly used crystal methamphetamine between 1999 and 2014. He only stopped using the drug because his parents called the police and he was taken into custody. Both of the stated disqualifying conditions apply.

The following mitigating conditions under AG ¶ 26 have also been considered:

- (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;
- (b) the individual acknowledges his or her drug-involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
 - (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used;and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility; 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 had been sober for three years as of the date of the hearing. He is clearly knowledgeable about the adverse impact drugs have had on his life, and he shows a credible intent to avoid such conduct in the future. Applicant has mitigated the security significance of his past drug use. Paragraph 2 is found for Applicant.

Paragraph 3 (Guideline E – Personal Conduct)

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications,

award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant knowingly falsified material facts about his financial situation, drug use, criminal history, and drug treatment history on a Government personnel security questionnaire in 2015. None of the potentially mitigating conditions under this guideline apply to his conduct in this case with regard to that questionnaire.

Applicant also falsified information about his drug use on his pre-enlistment security clearance application in 2004. He credibly testified that his recruiter told him to falsify the document. This occurred thirteen years ago, and the following mitigating condition under ¶ 17 applies to subparagraph 3.f only, which is found for Applicant:

(c) the offense is so minor, or so much time has passed, of the behavior was 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.

Applicant has not mitigated the security significance of his falsifications on a Government questionnaire in 2015. Paragraph 3 is found against Applicant.

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(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security 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 pertinent facts and circumstances surrounding this case. Applicant has not mitigated his significant financial difficulties, or his falsifications to the Government concerning his drug involvement and financial situation. Overall, the record evidence does create substantial

doubt as to Applicant's present eligibility and suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	Against Applicant
Subparagraph 3.d:	Against Applicant
Subparagraph 3.e:	Against Applicant
Subparagraph 3.f:	For Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge