



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 17-01507
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2018

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Misuse), Guideline E (Personal Conduct), and Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 22, 2015. On May 25, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H, E, and F. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant answered the SOR (by counsel) on July 24, 2017, and requested a hearing before an administrative judge. The Government was ready to proceed on October 25, 2017, and the case was assigned to me on October 27, 2017. On November 15, 2017, the Defense Office of Hearings and Appeals (DOHA) notified

Applicant that the hearing was scheduled for December 5, 2017. The hearing was convened as scheduled. Applicant was not represented by counsel at the hearing.¹

Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. The Government's exhibit list was appended to the record as Hearing Exhibit (HE) I. At the hearing, Applicant testified and submitted Applicant's Exhibits (AX) A through S and U through BB, which were admitted into evidence without objection.² At the hearing, Applicant's request to leave the record open until December 19, 2017 was granted. Following an extension, the record closed on January 18, 2018. Applicant timely provided additional documents that were admitted into evidence as AX CC through MM, without objection.³ Applicant's two exhibit lists were appended to the record as HE II (original) and III (post-hearing). DOHA received the transcript (Tr.) on December 20, 2017.

On June 8, 2017, the DOD implemented new AG.⁴ Accordingly, I have applied the June 2017 AG.⁵ However, I have also considered the September 2006 AG because they were in effect on the date the SOR was issued. I conclude that my decision would have been the same under either version.

Findings of Fact⁶

Applicant is 28 years old. He married his wife in July 2016, and had his first child in December 2017. He completed high school after only 3 years in 2006. He earned an associate in engineering science degree with honors in 2016, and plans to pursue his bachelor's degree in early 2018. He worked part time for his current defense contractor employer from March 2016 through August 2016, when he was hired full time. This is his first application for a security clearance.⁷

¹ Tr. at 7-8.

² A through S and U through W were submitted as attachments to his SOR answer. Despite the reference to it on Applicant's Exhibit List, AE T was not including among those attachments. Applicant was advised that AE T was missing from the record and that the record would be left open so that he could submit it after the hearing. Tr. at 23.

³ AX JJ is the document listed as AX T on HE II.

⁴ On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

⁵ ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

⁶ Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR Answer and his SCA (GE 1).

⁷ AX B, C, D, Z; Tr. at 8-9, 33-36, 65, 73.

Guidelines H and E

Applicant suffered a neck injury during a motorcycle accident in June 2006, a month after his mother passed away. He was prescribed narcotics for the pain. Eventually, he began misusing the prescribed narcotics and abusing other drugs, including cocaine, marijuana, and heroin, to which he became addicted. He used at least one of these drugs (whatever he could obtain) almost daily and with such frequency that he was unable to provide specific dates or occasions. At times, he also purchased unprescribed narcotics and other illegal drugs. Applicant explained that he used drugs not only to numb the physical pain from the accident, but also the emotional pain from his mother's death. He did not use any drugs while in a court-ordered drug treatment program from September 2010 through September 2011, and his last drug use was in September 2013.⁸

Between 2009 and 2013, Applicant was arrested and charged with criminal possession of a controlled substance five times. The drugs involved were: heroin in December 2009, September 2010, April 2013, and August 2013; and heroin and cocaine in August 2010.

The court ordered Applicant to complete a drug treatment program in connection with the 2009 and two 2010 charges. He began the program, which included six weeks of inpatient treatment followed by a direct transition to a halfway house and intensive outpatient treatment, in September 2010. Upon his successful completion of the program in September 2011, the court dismissed all three charges.

Following his April 2013 arrest, Applicant pled guilty and, while he awaited sentencing, was arrested again in August 2013. He also pled guilty to the second charge. For both charges, the court sentenced him to 36 months of supervised probation. He was released from supervision early and successfully completed the terms of his probation in January 2015.⁹

In February 2013, Applicant's employer terminated him from his retail job for misuse of company funds. Between November 2012 and February 2013, Applicant knowingly participated in a fraudulent return scheme in order to obtain money to purchase unprescribed narcotics and other illegal drugs. In lieu of pursuing criminal charges, his employer agreed to accept restitution payments, in small increments, of the \$350 that Applicant received from the scheme. He completed the payments in March 2016.¹⁰

Applicant voluntarily participated in a three-month residential substance abuse program through his church from September 2013 through December 2013, which

⁸ Tr. at 81.

⁹ AX G.

¹⁰ AX V; Tr. at 71-72.

involved mentoring, counseling, group therapy, and spiritual guidance. Immediately following his successful completion of that program, he continued vocational training and additional group therapy with another similar church program through August 2014. Since then, Applicant has not participated in any substance abuse-specific programs. He draws support for his sobriety from his family and church community. He believes that a relapse would cause him to lose their respect and trust, which would be impossible to regain. He attends a bible study twice a week.¹¹

In 2015, Applicant was prescribed narcotics for pain stemming from a botched dental procedure. He immediately gave the medication to his wife and advised her to administer it to him only if needed and as prescribed. He never took any of the medication because he never needed it. He anticipates that he will be having more dental work done in the near future. He plans to handle any prescribed medication similarly. He has advised his primary care physician of his past addiction and will advise the oral surgeon as well.¹²

Applicant relocated from City A to City B in order to disassociate himself from the environment and people involved with his drug abuse. He no longer associates with anyone presently using illegal drugs. He met his wife after he stopped using drugs. She is aware of his prior addiction.¹³

Applicant submitted a signed sworn statement declaring, under penalty of perjury, that he has no future intent to use any illegal controlled substance or abuse prescription drugs. He also stipulated to random drug testing and to the immediate and unqualified revocation of his security clearance in the event of any future positive drug test.¹⁴

A licensed clinical social worker, who is also a certified substance abuse counselor and substance abuse professional, evaluated Applicant in July 2017. She confirmed that the substance abuse program in which Applicant participated with his church is an accepted approach to treatment for substance dependence. She described Applicant's drug involvement as a classic example of opiate addiction arising from an injury. She assessed Applicant to be in complete remission, opined that he was not at risk for relapse, and specified that no treatment was warranted.¹⁵

The SOR cross-alleged, under Guidelines H and E, Applicant's purchase and use of unprescribed narcotics and other illegal drugs (SOR ¶¶ 1.a – 1.e/2.a), misuse of prescribed narcotics (SOR ¶¶ 1.e/2.a), five drug-related arrests (SOR ¶¶ 1.f – 1.h, 1.k, 1.l/2.a), and drug treatment (SOR ¶¶ 1.i, 1.j, 1.m). Applicant admitted to all but two of

¹¹ AX H; Tr. at 26-28; 38-39, 56-57, 80-81.

¹² Tr. at 81-87.

¹³ Tr. at 36-37.

¹⁴ AX I.

¹⁵ AX J and K.

the Guideline H allegations. As to those two, he admitted in part and denied in part with explanation. He admitted the Guideline E allegation.

Guideline F and E

Under Guideline F, the SOR alleged 12 delinquent debts, totaling \$11,069 (SOR ¶¶ 3.a – 3.l), and Applicant's 2013 employment termination and associated \$350 restitution (SOR ¶ 3.m). It also cross-alleged SOR ¶ 3.m under Guideline E (SOR ¶ 2.a). In his SOR answer, Applicant admitted to all but one of the Guideline F allegations. He successfully disputed the one debt that he denied, SOR ¶ 3.j/Sprint, \$255, on the basis that it was an employee cell phone account that was not his responsibility to pay.¹⁶

Applicant attributed the accumulation of his delinquent debts to the period of his drug addiction. He explained that his drug addiction led him to make a number of poor financial choices, including the fraud underlying his termination. His debts also included medical bills related to his 2006 accident.¹⁷

Applicant had resolved all of his delinquent debts before the hearing, albeit most after the issuance of the SOR. He had not resolved them sooner because he was not financially able until he became gainfully employed in 2016, and because he was following the advice of a debt consolidation company. In 2015, that company advised him not to pay his delinquent debts because the statute of limitations for collecting it was soon to expire. After consulting with an attorney to prepare his response to the SOR, he learned that he had received bad advice.¹⁸

In December 2017, Applicant took out a \$5,000 loan, which he used to pay off the balances of his high-interest credit cards. They were not delinquent at the time.¹⁹ Applicant has a net monthly remainder of approximately \$2,800, has not incurred any new delinquent debt, and is presently managing his finances responsibly.²⁰

Whole Person

Applicant reported his misuse of prescribed narcotics, purchase and use of unprescribed narcotics and other illegal drugs, arrests, and financial debts on his 2015 security clearance application and discussed them fully during his 2016 security clearance interview. Applicant was candid, sincere, and credible at the hearing. He

¹⁶ AE JJ; Tr. at 29.

¹⁷ Tr. at 28.

¹⁸ Tr. at 29, 40-56, 57-71.

¹⁹ AX DD through HH; Tr. at 74-78.

²⁰ AX W, GE 5; Tr. at 50-54.

acknowledged and accepted full responsibility for his substance misuse and related issues.

Applicant excelled academically while attaining his associate degree. In 2014, he was recognized by his college for the significant time he spent volunteering with the college's peer tutoring program.²¹

Applicant regularly attends his church and donates significant time and money in support of its various programs and charities. In 2016, Applicant spoke at a 2,000-person rally alongside others, including the local police chief, to advocate for his church's substance abuse program and to attest to how the program changed his life. In 2017, he joined a local community organization to share his addiction, treatment, and recovery story in order to help others overcome their own struggles with addiction.²²

Seven people (five friends who are members of his church – one of whom is also a work colleague, the senior pastor of his church – who also ministered the substance abuse program, and a reverend of his church – who is also the director of the substance abuse program) praised Applicant's character and trustworthiness, and corroborated his sobriety. A work colleague of one year lauded Applicant's character and work performance. Each of these references was aware of the Government's SOR concerns. Applicant has received several awards from his current employer, who described him as an "extremely valuable and exceptional employee."²³

Policies

"[N]o one has a 'right' to a security clearance."²⁴ As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information."²⁵ The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."²⁶

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative

²¹ AX B through E; Tr. at 29.

²² AX F, H, X, AA; Tr. at 31-33.

²³ AX A, F, H, BB; Tr. at 30-31, 33.

²⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁵ *Egan* at 527.

²⁶ EO 10865 § 2.

judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."²⁷ Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR.²⁸ "Substantial evidence" is "more than a scintilla but less than a preponderance."²⁹ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability.³⁰ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.³¹ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.³²

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."³³ "[S]ecurity clearance determinations should err, if they must, on the side of denials."³⁴

²⁷ EO 10865 § 7.

²⁸ See *Egan*, 484 U.S. at 531.

²⁹ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

³⁰ See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

³¹ Directive ¶ E3.1.15.

³² See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³³ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

³⁴ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

Analysis

Guideline H (Drug Involvement and Substance Misuse)

The concern under this guideline is set out 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.”

Applicant's misuse of prescribed narcotics, purchase and use of unprescribed narcotics and other illegal drugs, and his drug-related arrests, during the period 2006 through 2013, establishes the following disqualifying conditions under this guideline:³⁵

AG ¶ 25(a): any substance misuse (see above definition); and

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The following mitigating conditions under this guideline are established:

AG ¶ 26(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;

AG ¶ 26(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;

³⁵ The SOR allegations concerning Applicant's drug treatment (SOR ¶¶ 1.i, 1.j, 1.m) do not establish any disqualifying conditions under Guideline H and E. If anything, they support mitigation.

AG ¶ 26(c): abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

AG ¶ 26(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 acknowledged and accepted full responsibility for his substance misuse, during the hearing, throughout the security clearance investigation process, and with respect to the legal consequences associated with his arrests. Applicant successfully completed a drug treatment program in 2013 and has not used drugs in over four years.

Since Applicant's last drug use, he became gainfully employed, got married, and had a child. He relocated to a new city in order to distance himself from the environment where he used drugs and the persons with whom he used drugs. He no longer associates with anyone presently using illegal drugs. On the future occasion that Applicant might be prescribed necessary pain medication, he has developed a use plan that he successfully followed in 2015.

Applicant received a favorable prognosis by a duly qualified medical professional who assessed him to be in complete remission from substance dependency and not at risk for relapse. She described Applicant's drug involvement as a classic example of opiate addiction arising from an injury.

Applicant acknowledged the incompatibility of drug use with his maintenance of a security clearance, and agreed that it would be revoked if he resumed any drug use. Applicant was candid, sincere, and credible during the hearing. His witnesses corroborated the substantially changed behaviors and circumstances underlying Applicant's past substance misuse. Accordingly, I conclude that Applicant's substance misuse is not likely to recur, and does not cast doubt on his current reliability, trustworthiness, and good judgment.

Guideline F (Financial Considerations)

The concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

Applicant's delinquent debts, totaling \$11,069, and his 2013 employment termination and associated \$350 restitution establish three disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts), AG ¶ 19(c) (a history of not meeting financial obligations), and AG ¶ 19(d) (deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust).

The following mitigating conditions under this guideline are established:

AG ¶ 20(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;

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

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant incurred his delinquent debts under circumstances not likely to recur. He resolved them before his hearing and is managing his current finances responsibly. I conclude that his finances are under control, not likely to recur, and do not cast doubt on Applicant's current reliability, trustworthiness, and good judgment.

Guideline E (Personal Conduct)

The concern under this guideline, as set out in AG ¶ 15, includes:

"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.”

Applicant’s misuse of prescribed narcotics, purchase and use of unprescribed narcotics and other illegal drugs, and drug-related arrests, during the period 2006 through 2013, together with his 2013 termination and associated restitution, establish the following disqualifying condition under this guideline:³⁶

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

They also establish the general concerns involving questionable judgment and unwillingness to comply with rules and regulations. Incorporating my comments under Guideline H and F, I conclude that Applicant’s past drug use and related issues do not cast doubt on his current reliability, trustworthiness, and good judgment.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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

I have incorporated my comments under Guidelines H, E, and F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline H, E, and F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by his past substance misuse and associated personal conduct and financial considerations issues. Accordingly, I conclude that he has carried

³⁶ The SOR allegations concerning Applicant’s drug treatment (SOR ¶¶ 1.i, 1.j, 1.m) do not establish any disqualifying conditions under Guideline H and E. If anything, they support mitigation.

his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline H (Drug Involvement and Substance Misuse): FOR APPLICANT

Subparagraphs 1.a – 1.j: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

Paragraph 3, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.m: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine
Administrative Judge