



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



In the matter of: )  
)  
) ISCR Case No. 17-01594  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

02/27/2018  
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**Decision**  
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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns under Guideline F (financial considerations), but he did not mitigate the security concerns under Guidelines E (personal conduct) and H (drug involvement and substance misuse). Eligibility for access to classified information is denied.

**Statement of the Case**

On May 26, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E, F, and H. Applicant responded to the SOR on July 3, 2017, and elected to have the case decided on the written record in lieu of a hearing.

The Government's written case was submitted on August 31, 2017. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on September 24, 2017. As of November 13, 2017, he had not responded. The case was assigned to me on

January 16, 2018. The Government exhibits included in the FORM are admitted in evidence.

### **Findings of Fact**

Applicant is a 43-year-old employee of a defense contractor. He was unemployed from February 2016 until August 2016, when he began work for his current employer. He attended college for a period without earning a degree. He married in 1994 and divorced in 2012. He has three children.<sup>1</sup>

The financial allegations in the SOR include an unpaid judgment for \$4,219; a \$2,730 delinquent debt; and 12 delinquent medical debts. However, the four medical debts alleged in SOR ¶¶ 1.d through 1.g are not established. The September 2016 credit report does not report a balance for any of those debts. The eight remaining medical debts total \$1,670. Those eight debts, the judgment, and the \$2,730 debt are all listed on a September 2016 credit report.<sup>2</sup>

Applicant stated, without supporting documentation, that the judgment was paid through garnishment of his wages. He is listed as a co-maker on the \$2,730 delinquent debt. He indicated the account was used to buy furniture when he was married, and it was his ex-wife's responsibility to pay the debt. He stated the medical debts were for his child's medical treatment and should have been paid by health insurance.<sup>3</sup>

Applicant smoked marijuana, sometimes on a regular basis, between about 1993 and May 2016. He would stop for about 60 to 90 days when applying for a new job, which was not always successful because he failed a pre-employment drug test in 2002.<sup>4</sup>

Applicant intentionally falsified a Questionnaire for National Security Positions (SF 86) in August 2016, when he failed to disclose his marijuana use. He was interviewed for his background investigation in February 2017. He admitted his marijuana use. He stated that he did not report his marijuana use on the SF 86 because he knew that he would meet with an investigator and he would explain his use then. He also stated that he did not think drug use was relevant. He stated that he had not used marijuana since about May 2016, and he did not intend to use it in the future because he had grown out of it.<sup>5</sup>

In response to the SOR allegations under Guidelines E and H, Applicant admitted both allegations and added the comments: "I think it should be noted that I

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<sup>1</sup> Items 3, 5.

<sup>2</sup> Items 2, 4, 5.

<sup>3</sup> Items 2, 4, 5.

<sup>4</sup> Items 2, 5.

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

have never been arrested in my life for any reason what so ever.” That statement may be correct, but it is somewhat misleading. Applicant was criminally charged with displaying a disabled person’s placard when the disabled person (his child) was not in the vehicle. He was convicted of a misdemeanor criminal offense in 2009 after a jury trial. His sentence included probation and a fine. Warrants were also issued against Applicant in 2010 and 2012 for failure to appear (FTA) to address traffic citations. He paid the underlying fines and the warrants were dismissed.<sup>6</sup>

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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(a), 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 national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must 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.” The applicant 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

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<sup>6</sup> Items 2, 5. The SOR did not allege the convictions and the warrants. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when putting Applicant’s statement in context, in the application of mitigating conditions, and during the whole-person analysis.

Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 H, Drug Involvement and Substance Misuse**

The security concern for drug involvement and substance misuse 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following is potentially applicable in this case:

(a) any substance misuse (see above definition).

Applicant used marijuana between about 1993 and May 2016. The above disqualifying condition is applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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.

There is no evidence that Applicant has used marijuana since May 2016. He stated that he did not intend to use it in the future because he had grown out of it. However, he stopped smoking marijuana in the past and then resumed. He failed to divulge his drug use on his SF 86, and he did not think drug use was relevant. Applicant's conduct continues to cast doubt on his reliability, trustworthiness, and good judgment. His well-established pattern of illegal drug use is not mitigated. AG ¶ 26(a) is not applicable, and AG ¶ 26(b) is partially applicable.

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

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 clearance investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant intentionally falsified his August 2016 SF 86 when he failed to report his marijuana use. AG ¶ 16(a) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant disclosed his marijuana use during his background interview in February 2017. It is positive that Applicant revealed his marijuana use in his interview, but that cannot be considered a “prompt” correction. Applicant’s conduct continues to cast doubt on his current reliability, trustworthiness, and good judgment. Personal conduct concerns remain despite the presence of some mitigation.

## **Guideline F, Financial Considerations**

The security concern 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has a history of financial problems, including delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

The medical debts alleged in SOR ¶¶ 1.d through 1.g are not established. Those allegations are concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

I accept Applicant's statements that the judgment has been satisfied, his ex-wife was supposed to pay the furniture debt, and the medical debts were for his child's medical treatment and should have been paid by health insurance. Any remaining financial issues are insufficient to be a security concern and are mitigated.

## **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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E, F, and H in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns, but he did not mitigate the personal conduct and drug involvement and substance misuse security concerns.

## **Formal Findings**

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

Paragraph 1, Guideline H:	Against Applicant
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline F:	For Applicant
Subparagraphs 2.a-2.n:	For Applicant
Paragraph 3, Guideline E:	Against Applicant
Subparagraph 3.a:	Against Applicant



## **Conclusion**

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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Edward W. Loughran  
Administrative Judge