



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-03811  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: Troy L. Nussbaum, Esq.

05/16/2018  
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**Decision**  
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MURPHY, Braden M., Administrative Judge:

Applicant documented that his delinquent debts have been or are being resolved. He mitigated the financial considerations security concerns. Applicant mitigated the personal conduct security concerns over his answers to certain questions on his security clearance application about his drug involvement and resulting drug treatment. Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 6, 2015. On November 13, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct, and Guideline F, financial considerations. The action was taken under Executive Order (Exec. Or.) 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 Security Executive Agent

Directive 4, *National Security Adjudicative Guidelines* (AG), effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 8, 2017 and requested a hearing. With his Answer, he submitted five documents or groups of documents. During the hearing they were subsequently marked as Answer Exhibits (Ans. Ex.) A through E. On February 14, 2018, Applicant's counsel requested an expedited hearing. An attachment to that filing was marked as Ans. Ex. F.

The case was assigned to me on February 15, 2018. The next day, a notice of hearing was issued scheduling the hearing for March 22, 2018, a date arranged with the parties. The hearing convened as scheduled. At the hearing, Department Counsel submitted documents which were marked as Government's Exhibits (GE) 1 through 4. GE 1, 2 and 4 were admitted without objection. GE 3 was not admitted. Applicant's Ans. Ex. A-F were admitted without objection. Applicant also offered Applicant's Exhibits (AE) A through O, which were admitted without objection. Applicant and two witnesses testified. I held the record open until April 2, 2018, to afford Applicant the opportunity to submit additional documentation. He timely submitted one document, which was marked as AE P and admitted without objection. DOHA received the transcript on March 30, 2018, and the record closed on April 2, 2018.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a-1.j and ¶¶ 1.l-1.n. He denied SOR ¶¶ 1.k, 2.a, and 2.b, with explanations and some documents. His admissions and other statements are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 40 years old. He did not graduate from high school. Since October 2015, he has worked in cybersecurity for a defense contractor. He has never held a clearance. (Tr. 10, 32-33; GE 1) Applicant has never married and has no children. He lives with his girlfriend. She works for a federal government agency and holds a security clearance. (Tr. 131-133, 157)

From November 2005 to May 2007, Applicant operated his own retail business. The business failed, and Applicant lost about \$200,000. (GE 1 at 16-17, 28-29) Applicant then worked for a remodeling company for about 18 months, from May 2007 to January 2009. He then managed his own technology business for three years, until it failed in February 2012. (GE 1 at 14-15)

Applicant then worked for a media company for three and a half years, until July 2015. He left the position to make a career change. He also moved to a new state. He was unemployed for three months, until starting his current job. (GE 1 at 11-13)

Applicant had a serious auto accident in 2004, resulting in numerous broken bones, related surgeries and medical treatment. Applicant was immobilized for about six months. He also had a collapsed lung in 2014. (Tr. 38-39)

Following the accident, Applicant was prescribed Percocet by his orthopedic surgeon. He initially took the medication as prescribed. At some point, after about eight or ten months, Applicant began self-medicating by taking more than the prescribed dose. He subsequently became addicted. Applicant began seeking other options after his doctor declined to continue his prescription. (Tr. 39-42) This included seeking buying drugs on the street or from friends, at times in large amounts. (Tr. 39-42, 107-110)

In about February 2006, Applicant went to a methadone clinic. He also sought medical help for his addiction. (Tr. 39-42, 110-112) From February 2006 to May 2013, Applicant was under the care of a medical doctor certified in treating drug dependencies. Applicant's doctor provided him with "continued assistance with opioid dependence." Applicant was stabilized on Buprenorphine/Naloxone. He visited the doctor at least every 30 days. His office visits consisted of medication management, counseling, and urine toxology screening. (Ans. Ex. D)

According to his doctor's letter, Applicant remained in full compliance with his treatment plan. He took his medication as prescribed, never requested early fills on his prescription, and never tested positive. He remained gainfully employed and maintained a healthy support network, including family, friends, colleagues, and participation in a 12-step program. Applicant was withdrawn from the medication in May 2013. He was discharged with an "excellent prognosis for sustained recovery." (Ans. Ex. D)

Applicant testified that his recovery was "the single most difficult thing I've ever done in my entire life." (Tr. 42) Applicant has not been under medical treatment for drug abuse since he was discharged from that program in May 2013 nor has he had any need for it. (Tr. 123)

## **Guideline F**

Applicant's various delinquencies include medical debts, past-due utilities, and a tax lien. He attributed his debts to multiple factors, including his 2004 auto accident, a job loss, and a business failure. He also has had serious health problems and physical ailments resulting from the accident (as well as his addiction). He also had periods when he did not have medical insurance. (Tr. 123-127)

In December 2017, Applicant signed up with a debt-resolution service. Through their assistance, Applicant resolved most of the debts in the SOR before the hearing. Applicant acknowledged that before receiving the SOR, he made no significant effort to resolve his debts, due to lack of income. He and his girlfriend testified that they contacted the debt service before receiving the SOR, because they want to buy a house. (Tr. 57, 127-129, 150-151; Ans. Ex. A; Ans. Ex. B; AE K)

Several of Applicant's delinquencies are medical debts. This includes SOR ¶¶ 1.a (\$3,132); 1.c (\$1,096); 1.e (\$491); 1.f (\$458); 1.j (\$34); 1.m (\$1,096) and 1.n (\$746). Some of these debts were incurred when Applicant was working as an independent contractor and did not have health insurance. Applicant paid \$150 towards ¶ 1.a, paid \$1,352 to settle SOR ¶¶ 1.c, 1.e, 1.f and 1.j. He settled ¶ 1.n for \$150. He will pay off SOR ¶ 1.a through an automatic payment plan. (Tr. 58-61, 66-67, 73; AE A; AE C; AE J) SOR ¶¶ 1.c and 1.m are the same medical debt. (Tr. 16-17; 168-170, 176-177; GE 2 at 8; GE 4 at 2)

SOR ¶ 1.b (\$2,039) is an account placed for collection by an apartment complex. Applicant settled the account for \$1,529. (Tr. 61-66; AE B) SOR ¶ 1.c (\$578) is an account placed for collection by a phone company. The account has been settled and closed. (Tr. 67-69; AE D) SOR ¶ 1.g (\$449) is a past-due utility bill. The account is closed with no balance owed. (Tr. 70-71; AE E) SOR ¶ 1.h (\$409) is a past-due cable bill. Applicant settled the account for \$271. (Tr. 71; AE F)

SOR ¶ 1.i (\$386) is an old, past-due energy bill. He settled the debt for \$192 in March 2018. (Tr. 71-72; AE G) SOR ¶ 1.l (\$1,582) is an electric bill placed for collection. Applicant settled the account for \$200. (Tr. 72; AE I)

SOR ¶ 1.k is a federal tax lien issued in 2007 for \$16,067. It concerned tax years 2002, 2003, and 2005. (AE H; AE P) Applicant testified during that period, he worked as an independent contractor. He received a Form 1099 but testified that he did not know what to do with it. He said he hired an accountant, who did not do a good job. At some point, Applicant was living with a cohabitant and her daughter. He attempted unsuccessfully to claim them as dependents on his tax returns. Ultimately, he had income taxes that he was unable to pay. (Tr. 74-76, 94; GE 1 at 33)

Applicant testified that for several years, beginning in about 2011, the IRS kept his tax refunds to pay down his past-due taxes. He was not otherwise on a payment plan. (Tr. 77-78, 89-93) He testified that he knew he owed past-due taxes, but said he was not aware that a tax lien had been issued against him until he received the SOR. He said the lien did not appear on the credit report he pulled when he filled out his SCA (though it was listed on GE 2). Applicant received a \$3,147 tax refund in July 2017, his first refund in several years. (Ans. Ex. C) The tax lien has been released. (AE H) Once he learned about the lien, Applicant testified that he spent significant time and energy sorting out with the IRS whether he owed them anything. He does not believe he owes any other past-due taxes. (Tr. 77-82, 84-89)

Applicant was hired by his current employer in 2015 at a salary of \$75,000. When he disclosed his debts on his SCA, he noted that until he was hired for that job, he was unable to pay his debts. (GE 1 at 33) Applicant now earns about \$93,000. He moved in with his girlfriend about a year and a half before the hearing. Their combined income improved his finances. Applicant now has a healthy monthly surplus. (AE M; AE N, AE O) Applicant's intentions are to continue to resolve his debts. He is enrolled in a credit-monitoring service. (Tr. 104, 129-130, 152)

## Guideline E

In preparing his SCA, Applicant pulled a credit report and listed numerous delinquencies, including medical debts and utilities. He also noted that he had some tax problems, and disclosed other material background information. (GE 1 at 28-30, 33-41; Tr. 47-52)

Section 23 of Applicant's November 2015 SCA contains the following question under "Misuse of Prescription Drugs":

**In the last seven (7) years**, have you intentionally engaged in the misuse of prescription drugs, regardless of whether or not the drugs were prescribed to you or someone else?<sup>1</sup>

Applicant answered "No." In SOR ¶ 2.a, the Government alleged that Applicant thereby deliberately failed to disclose that he "used Percocet from about 2004 to at least 2009, used Methadone from about 2004 to at least 2009 and used Suboxone from about 2009 to at least 2013."

Applicant denied SOR ¶ 2.a, on the grounds that his answer to the question was accurate. (Answer; Tr. 119) He explained in his Answer that he was prescribed Percocet in 2004, after his auto accident. Applicant acknowledged that he became dependent on the drug "for a period of four to five months" afterwards, in 2004. He said his "last use of Percocet was 2004," well before the seven-year scope of the question on the SCA. (Answer; Tr. 114, 117)

Applicant also denied ever misusing methadone, though he acknowledged that he was prescribed the drug at a methadone clinic in 2005-2006 (again, well before the seven-year scope of the question). (Answer) Similarly, he denied ever misusing Suboxone while under his doctor's care between 2006 and 2013. (Answer; Ans. Ex. D;<sup>2</sup> Tr. 115-116)

At hearing, Applicant testified that the last time he ever misused a prescription drug was 2005. While under his doctor's treatment, he took random urinalysis tests at least once a month, without incident. (Tr. 45-46)

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<sup>1</sup> GE 1 at 32.

<sup>2</sup> Ans. Ex. D references Buprenorphine and Naloxone, the generic name for Suboxone, the opioid medication referenced in SOR ¶ 2.a. See <https://www.drugs.com/suboxone.html>. (Tr. 111-112)

Section 23 of Applicant's November 2015 SCA contained the following question concerning voluntary drug treatment:

Have you **EVER** voluntarily sought counseling or treatment as a result of your use of a drug or controlled substance?<sup>3</sup>

Applicant answered "No." In SOR ¶ 2.b, the Government alleged that Applicant thereby deliberately failed to disclose that he sought treatment with a medical doctor for opioid dependence from 2006 to 2013.

Applicant admitted incorrectly answering the question on the SCA but denied deliberate falsification. (Answer; Tr. 120) He offered no excuse in his Answer, but denied that he intended to be duplicitous, as he voluntarily disclosed the information to the investigator during his background interview. (Answer)

At hearing, Applicant testified that he told the investigator "the entire story," and "she had me fill out a form . . . a medical release form." (Tr. 120-121). He testified that the investigator was not aware that Applicant had sought medical treatment until he told her about it. (Tr. 121) The summary of Applicant's background interview is not in evidence.

Applicant denied any intention to hide his drug treatment or to falsify his SCA. (Tr. 49, 55) He considers the fact that he overcame his addiction through that treatment to be "an exceptional accomplishment." (Tr. 50)

Applicant testified that he has overcome many hardships to get where he is in life. This includes overcoming his addiction, his lack of formal education, and his failed businesses. He greatly enjoys his job and derives satisfaction from the important work that he does. (Tr. 32-33, 52-54)

Applicant's girlfriend testified on his behalf and provided a reference letter. She works for the Defense Department, and has held a clearance for the past five years. She and Applicant have dated since August 2016, which was when they met. She considers Applicant one of the most honest people she has ever met. He "laid everything out for me" about his past when they met. (Tr. 143-157)

A co-worker of Applicant's testified by phone. They have worked closely together for four years. The co-worker regards Applicant as trustworthy and honest. He has a reputation for "getting the job done" and for a strong work ethic. (Tr. 136-141) Numerous references noted his "can do" attitude, dedication, honesty and trustworthiness. (Ans. Ex. E; Ans. Ex. F)

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<sup>3</sup> GE 1 at 32. (emphasis in original)

## Policies

It is well established that no one has a right to a security clearance. As the Supreme Court noted in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”<sup>4</sup>

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(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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 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.

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<sup>4</sup> *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

## Analysis

### Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 disqualifying condition under AG ¶ 16 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 misused Percocet (and became addicted to it) in 2004 and 2005. He sought treatment for his addiction at a methadone clinic and then with a medical doctor. Both his misuse of Percocet and his use of methadone occurred more than seven years before November 2015, when he submitted his SCA. Thus, he was not required to disclose either use. Applicant's use of Suboxone occurred between 2006 and February 2013, but it was in accordance with a prescription. He also submitted a letter from his medical provider documenting that Applicant took his medication as prescribed, never requested early fills on his prescription, and never tested positive. Thus, Applicant did not "intentionally engage in the misuse of prescription drugs," so he had no duty to disclose his Suboxone use on his SCA. AG ¶ 16(a) is not established as to SOR ¶ 2(a).

Applicant's SCA had a question requiring him to disclose that he underwent medical treatment for his opioid dependence from 2006 to 2013. Applicant disclosed substantial background information on his SCA, but he did not disclose his drug treatment. On the one hand, I credit Applicant with his candor in disclosing other derogatory information, including about his financial history. On the other hand, given the amount of time he spent preparing his SCA, I cannot say that Applicant simply overlooked the drug treatment question, nor did he claim that he misread or misinterpret it. Give the plain language of the question, and the record evidence that Applicant was in voluntary drug treatment as recently as 2013, AG ¶ 16(a) applies.

AG ¶ 17 sets forth the Guideline E mitigating conditions, of which 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; and

(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.

The summary of Applicant's background interview is not in evidence. However, Applicant both explained in his Answer and testified at hearing that he volunteered the information about his drug treatment to the interviewing agent before being confronted about it. He testified that he was asked to fill out a medical release form during the interview, and he did so. This testimony is un rebutted. It is also credible, as the identity of Applicant's drug treatment provider would likely have been known only to him. AG ¶ 17(a) applies, since Applicant "made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts."

Although Applicant provided significant details on his SCA about his finances and other information, he nonetheless failed to disclose his drug treatment. Falsification of even a single question on a security clearance application is not a minor offense. However, through his disclosure of his drug treatment to the investigator, cooperation with the investigation, and his candor at the hearing, Applicant established that he is rehabilitated. Applicant's falsification of his SCA is unlikely to recur and no longer casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 17(c) partially applies. SOR ¶ 2.b is resolved in Applicant's favor.

## **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. . . .

The financial considerations guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable:

(a) inability to satisfy debts;

(c) a history of not meeting financial obligations; and

(g) failure . . . to pay annual Federal, state or local income tax as required.

Applicant's incurred numerous unresolved delinquent debts over the last several years, including medical debts, utilities, and past-due federal income taxes. AG ¶¶ 19 (a), 19(c) and 19(g) apply.

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

(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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Many of Applicant's debts are medical debts, incurred after a serious auto accident, or due to a serious medical condition. Some of these debts occurred during periods when Applicant did not have medical insurance. Several of Applicant's other debts, including his tax debt, are due to employment instability and business failures. These were conditions beyond his control that impacted his finances. The first prong of AG ¶ 20(b) applies.

For full application of AG ¶ 20(b), Applicant must establish that he acted reasonably under the circumstances. Applicant acknowledged that before receiving the SOR, he made no significant effort to resolve his debts, due to lack of income. Shortly before he received the SOR, Applicant retained a debt-resolution service to help him resolve his debts. Most of his debt payments occurred earlier this year. He therefore gets less credit under AG ¶¶ 20(b) and 20(d) than if he had done so earlier. Nevertheless, his debts are largely repaid and being resolved. His finances have significantly improved. AG ¶ 20(c) applies.

Similarly, Applicant testified that he did not independently establish a payment plan with the IRS to resolve his significant federal income tax debt. However, that debt was resolved over several years through the IRS's recapturing of Applicant's tax refunds. The lien was issued in 2007 and it was released in 2016. Applicant also received a tax refund in 2017. AG ¶ 20(g) applies.

## **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 F and E in my whole-person analysis.

Applicant has taken a long road to get to where he is. He has overcome many hardships, including a lack of a formal education, failed businesses, a serious auto accident and related medical treatment, as well as an addiction to opioids. Some of these hardships are due to conditions beyond his control, and some of them are due to his own bad choices. However, Applicant's professional and personal lives have both stabilized. I conclude that his financial delinquencies are resolved and are unlikely to recur. I conclude that while he should have disclosed his drug treatment on his SCA, he mitigated the security concern by voluntarily disclosing it to the interviewing agent and cooperating fully with the investigation. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility for access to classified information.

## **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: FOR APPLICANT

Subparagraphs 1.a-1.n: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 1.a-1.b: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

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Braden M. Murphy  
Administrative Judge