



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



In the matter of: )  
)  
) ISCR Case No. 15-00235  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: *Pro se*

12/04/2015

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns, but he did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 10, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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 the DOD on September 1, 2006.

Applicant responded to the SOR on July 6, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted in a file of relevant material (FORM) on September 4, 2015. In the FORM,

Department Counsel amended the SOR by adding three allegations under Guideline E, personal conduct.

A complete copy of the 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 22, 2015. He responded with a letter that I have marked Applicant's Exhibit (Ex) A. Department Counsel asked him to clarify whether he still wanted the case decided on the written record or if he wanted a hearing. Applicant responded that he still wanted the case decided on the written record in lieu of a hearing. The e-mail correspondence is marked Appellate Exhibit (AE) I. The case was assigned to me on November 2, 2015. The Government exhibits included in the FORM and AE A are admitted in evidence without objection.

### **Findings of Fact**

Applicant is a 30-year-old employee of a defense contractor. He is applying for a security clearance for the first time. He has an associate's degree that was awarded in 2005. He has never married, and he has no children.<sup>1</sup>

Applicant smoked marijuana about twice a week from 2002 through 2010. He received a citation in 2004 for possession of marijuana. He received pretrial diversion in which he was required to complete 150 hours of community service. He received a citation in 2009 for possession of drug paraphernalia. He paid a \$75 fine. He used cocaine in 2010.<sup>2</sup>

Applicant was arrested in 2008 for driving under the influence (DUI). He was found not guilty in 2011. He received inpatient treatment in 2010 after a suicide attempt. The treatment included drug and alcohol counseling. There is no evidence that he has used any illegal drugs since 2010.<sup>3</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) in January 2014. Section 22 asked:

#### **Section 22 - Police Record**

For this item, report information regardless of whether the record in your case has been sealed, expunged, or otherwise stricken from the court record, or the charge was dismissed. You need not report convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C.

---

<sup>1</sup> Item 3.

<sup>2</sup> Item 4.

<sup>3</sup> Item 4. Applicant's drug and alcohol issues were not alleged in the SOR and will not be used for disqualification purposes. They are discussed because he had an obligation to report them on his Questionnaire for National Security Positions (SF 86).

3607. Be sure to include all incidents whether occurring in the U.S. or abroad.

**Police Record**

Have any of the following happened? (If 'Yes' you will be asked to provide details for each offense that pertains to the actions that are identified below.)

- **In the past seven (7) years** have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Do not check if all the citations involved traffic infractions where the fine was less than \$300 and did not include alcohol or drugs)
- **In the past seven (7) years** have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?
- **In the past seven (7) years** have you been charged, convicted, or sentenced of a crime in any court? (Include all qualifying charges, convictions or sentences in any Federal, state, local, military, or non-U.S. court, even if previously listed on this form).

\* \* \*

**Police Record (EVER)**

Other than those offenses already listed, have you **EVER** had the following happen to you?

\* \* \*

- Have you **EVER** been charged with an offense related to alcohol or drugs?

Section 23 of the SF 86 asked about illegal drug use and activity, including the following questions:

**Illegal Use of Drugs or Controlled Substances**

**In the last seven (7) years**, have you illegally used any controlled substances? Use of a controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance.

## **Illegal Drug Activity**

**In the last seven (7) years**, have you been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling, or sale of used any drug or controlled substance?<sup>4</sup>

Applicant reported his DUI arrest on the SF 86, but he failed to list his illegal drug use and his drug-related criminal citations. Applicant discussed those matters during his background interview in February 2014. He told the investigator that he did not list his illegal drug use because he did not want to be disqualified immediately, and he wanted a chance to explain himself to an investigator. He denied that he intentionally failed to list his drug-related criminal citations. He stated that he did not list his citation in 2004 for possession of marijuana because he did not have all the information and he did not know how to proceed without all the information. He stated that he did not list his citation in 2009 for possession of drug paraphernalia because he did not understand the question.<sup>5</sup>

Applicant wrote in his response to the FORM that he “did not, and will not, knowingly falsify information to the DOD, US Government, or anyone.” He discussed why he did not divulge his drug-related criminal charges on his SF 86. He stated that he “was forthcoming with this information and it is recorded in the transcript of the initial investigation,” and he was “perplexed as to how this can be construed as falsifying information.” He did not address why he failed to divulge his illegal drug use.<sup>6</sup>

After considering all the evidence, I find that Applicant intentionally provided false information about his drug use and his drug-related criminal citations on his SF 86. There is insufficient evidence for a finding that he intentionally falsified the following question:

**In the last seven (7) years**, have you been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling, or sale of used any drug or controlled substance?

The SOR alleges 12 delinquent debts with balances totaling about \$20,778. The debts were listed on credit reports from February 2014, October 2014, and July 2015. Applicant denied owing all the debts. He stated the debts were either paid or did not belong to him. The most recent credit report only lists two of the debts alleged in the SOR, both medical debts. The \$8,000 medical debt alleged in SOR ¶ 1.a is listed on the 2015 credit report as having a balance of \$1,200.<sup>7</sup>

---

<sup>4</sup> Item 3.

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

<sup>6</sup> Ex. A.

<sup>7</sup> Items 2, 4-7; Ex. A.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

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 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 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant intentionally provided false information about his drug-related criminal citations on his SF 86. AG ¶ 16(a) is applicable to SOR ¶¶ 2.b and 2.c. He also intentionally provided false information about his drug use. However, SOR ¶ 2.a did not allege that he falsified the question that asked about his drug use; it alleged that he falsified the illegal drug activity question. There is insufficient evidence for a finding that he intentionally falsified that specific question. SOR ¶ 2.a is concluded for Applicant.

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;

(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 caused 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 discussed his drug use and criminal citations during his background interview in February 2014. AG ¶ 17(a) has some applicability. However, his statement in his response to the FORM that he “did not, and will not, knowingly falsify information to the DOD, US Government, or anyone” is false. Applicant still has not learned that the DOD expects the truth from the individuals it entrusts with classified information. Personal conduct security concerns are not mitigated.

## **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal 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 or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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.

The most recent credit report lends credibility to Applicant's statement that his debts have been paid or disputed. Financial considerations concerns 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(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the 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 and F in this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to 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 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 F:	For Applicant
Subparagraphs 1.a-1.l:	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.c:	Against Applicant

### **Conclusion**

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

---

Edward W. Loughran  
Administrative Judge