



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



In the matter of: )  
)  
) ISCR Case No. 14-03793  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

08/07/2015

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations and drug involvement security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 21, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations) and H (drug involvement). 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 December 12, 2014, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on March 18, 2015. 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 April 28, 2015. As of July 29, 2015, he had not responded. The case was assigned to me on July 31, 2015. The Government exhibits included in the FORM are admitted.

### **Findings of Fact**

Applicant is a 36-year-old prospective employee of a defense contractor. His job is contingent upon receipt of a security clearance. He attended college for a period, but he did not earn a degree. He has never married. He has a minor child.<sup>1</sup>

Applicant started smoking marijuana when he was a teenager. It progressed to the point where he was smoking marijuana almost every day. He bought the marijuana from friends and acquaintances about every two weeks.<sup>2</sup>

Applicant was arrested in 2007 and charged with refusal to take a breathalyzer and possession of marijuana. A bag of marijuana was found in his car. He was found guilty of refusal to take a breathalyzer, and the possession of marijuana charge was dismissed. His driver's license was suspended for six months, and he was fined \$2,500.<sup>3</sup>

Applicant listed his marijuana use and his arrest and conviction on his Questionnaire for National Security Positions (SF 86), which he submitted in January 2014. He noted that he last used marijuana in October 2013. He wrote that he did not intend to use illegal drugs in the future because he "need[s] a job." He was interviewed for his background investigation in February 2014. He reiterated that he had not used marijuana since October 2013. He also stated that he did not intend to use marijuana in the future because he knew that it would affect his ability to obtain a job. He stated that he no longer associated with anyone who uses illegal drugs.<sup>4</sup>

Applicant has a history of financial problems. He has a sporadic work record with seasonal work and extended periods of unemployment. He filed Chapter 7 bankruptcy in 2006, and his debts were discharged the same year.<sup>5</sup>

The SOR alleges Applicant's bankruptcy and 13 delinquent debts with balances totaling about \$19,900. Applicant admitted owing all the debts. Each debt is also listed on at least one credit report.<sup>6</sup>

---

<sup>1</sup> Items 3, 6.

<sup>2</sup> Items 2, 3, 6.

<sup>3</sup> Items 2, 3, 6.

<sup>4</sup> Items 3, 6.

<sup>5</sup> Items 2, 3, 6.

<sup>6</sup> Items 2, 4-6.

Applicant was unemployed when he submitted his SF 86 and when he was interviewed for his background investigation. His current job status is unknown. He told the background investigator in February 2014 that he was unable to pay any of his delinquent debts at that time, but he would start paying them if he obtained a job. There is no evidence of any payments toward his delinquent debts.<sup>7</sup>

### **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

---

<sup>7</sup> Items 3, 6.

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**

The security concern for drug involvement is set out in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.

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

- (a) any drug abuse;<sup>8</sup> and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant purchased, possessed, and used marijuana for numerous years. AG ¶¶ 25(a) and 25(c) are 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) a demonstrated intent not to abuse any drugs in the future, such as:
  - (1) disassociation from drug-using associates and contacts;
  - (2) changing or avoiding the environment where drugs were used;
  - (3) an appropriate period of abstinence; and
  - (4) a signed statement of intent with automatic revocation of clearance for any violation.

There is no evidence that Applicant has used marijuana since October 2013. He stated that he did not intend to use marijuana in the future because it would affect his

---

<sup>8</sup> Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

ability to obtain a job. He also stated that he no longer associated with anyone who uses drugs.

However, Applicant chose to violate the law on hundreds, if not thousands, of occasions by possessing and using marijuana on a daily basis. Because Applicant chose to proceed without a hearing, I was unable to question him and gauge his credibility. I find that Applicant's drug use continues to cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 26(a) and 26(b) are partially applicable. Notwithstanding, I conclude that security 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 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 has 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has a sporadic work record with seasonal work and extended periods of unemployment. However, he was using marijuana on a daily basis. He did not pay his debts, but he was able to fund his marijuana use. There is no evidence of any payments toward his delinquent debts, but he stated that he would start paying them if he obtained a job. The Appeal Board has held that “intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches.” See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

There is insufficient evidence for a determination that Applicant’s financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), 20(d) are not applicable. AG ¶ 20(b) is partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

### **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 F and H 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 did not mitigate the financial considerations and drug involvement 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:	Against Applicant
Subparagraphs 1.a-1.n:	Against Applicant
Paragraph 2, Guideline H:	Against Applicant
Subparagraphs 2.a-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