



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



In the matter of: )  
)  
) ISCR Case No. 14-04293  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden Murphy, Esquire, and  
Adrienne Strzelczyk, Esquire, Department Counsel  
For Applicant: *Pro se*

06/24/2015

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant illegally purchased and used drugs between 1985 and 2013. Part of his illegal drug-related behavior occurred after he was granted a security clearance in 2009. Moreover, he falsified both his 2009 and 2011 security clearance applications (SCA) to conceal his history of drug-related behavior and criminal record. He failed to mitigate the drug involvement and personal conduct security concerns. He mitigated the financial considerations security concerns. Clearance denied.

**Statement of the Case**

Applicant submitted SCAs on August 25, 2009, and March 31, 2011. The Department of Defense (DOD) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline H (drug involvement), Guideline E (personal conduct), and Guideline F (financial considerations) on October 23, 2014.<sup>1</sup> Applicant

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<sup>1</sup> The DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines

answered the SOR (undated), and requested a hearing before an administrative judge. The case was assigned to me on March 4, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 13, 2015, scheduling a hearing for April 7, 2015.

At the hearing, the Government offered eight exhibits (GE 1 - 8), which were admitted without objection. Applicant testified, but did not submit documentary evidence. DOHA received the hearing transcript (Tr.) on April 14, 2015.

### **Findings of Fact**

In Applicant's response to the SOR, he admitted the factual allegations in SOR ¶¶ 1.a through 1.e and 2.a through 2.h. He denied the allegations in SOR ¶¶ 3.a through 3.d. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 44-year-old desktop support engineer employed with a federal contractor. He graduated from high school in 1988, and received an associate's degree in 1992. Applicant married in 2001 and divorced in 2005. He is not currently married. He has four children, ages 13, 21, 24, and 26.

Applicant was hired by his current employer in August 2009, and shortly thereafter, he was granted a secret-level security clearance. His clearance was upgraded to a top secret clearance in 2011, and it has been in effect through the date of his hearing. (Tr. 7-10)

Between 1985 and May 2013, Applicant illegally purchased and used phencyclidine (PCP) on at least a weekly basis. He also illegally used marijuana from about 1985 until the 1990s. He illegally used PCP after he was granted a security clearance in 2009. (Tr. 30, 36-38; SOR response to SOR ¶ 1.a; GE 3)

Section 23 of Applicant's August 2009 SCA asked him to disclose whether in the last seven years he illegally possessed or used any controlled substance, including marijuana and hallucinogenics, such as PCP. Applicant deliberately answered "No" to this question and failed to disclose his prior illegal drug use. (GE 2)

In January 2010, Applicant was arrested and charged with: (1) Driving/Attempting to Drive Vehicle While Impaired by Controlled Dangerous Substance; (2) Driving Wrong Way—One Way Street; and (3) Attempt by Driver to Elude Uniformed Police by Failing to Stop Vehicle. In May 2011, the court fined Applicant \$300. (Response to SOR ¶ 1.e)

In April 2013, Applicant drove recklessly while under the influence of PCP. He was arrested and charged with: (1) Driving/Attempting to Drive Vehicle While Impaired

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for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

by Alcohol or Controlled Dangerous Substance; (2) Driving Under the Influence .08 or Higher; (3) Possession of Marijuana; and (4) Unsafe Operation of Vehicle. In September 2013, he was convicted of Driving/Attempting to Drive Vehicle While Impaired by Alcohol or Controlled Dangerous Substance and Possession of Marijuana. The other offenses were dismissed. He was sentenced to 18 months of probation and a fine, and he was required to complete substance abuse treatment. He completed his probation in March 2015.

Applicant participated on a drug rehabilitation program from April 2013 to March 2015. He claimed that he now avoids any places where illegal drugs may be used. He also claimed that he ended his association with his illegal drug-using friends.

Section 23 of Applicant's March 2011 SCA asked whether in the last seven years he (1) illegally possessed or used any controlled substance, including marijuana and hallucinogenics, such as PCP; and (2) whether he illegally possessed or used any controlled substances while holding a security clearance. Applicant answered "No" to both questions and deliberately failed to disclose his illegal drug-related behavior between 2002 and 2011, and that he illegally used drugs while possessing a security clearance between 2009 and 2011.

Section 22 of Applicant's March 2011 SCA also asked whether he had ever been charged with an offense related to alcohol or drugs. Applicant answered "No" to this question and deliberately failed to disclose that he was charged with alcohol or drug related offenses in the late 1990s, in 2007, and 2010.

Applicant acknowledged that he read the questions about his drug and alcohol history and knew he was required to disclose the information. He explained that he did not disclose his drug and alcohol-related history and offenses because it would have drastically affected his chances of being employed. (Tr. 32-33; GE 3) He had arrests for driving under the influence of alcohol in the 1990s, February 2007, and in January 2010. Additionally, he was arrested for driving under the influence of drugs (DUI—drugs) in April 2013 (Tr. 33-34, 47)

Applicant testified that he understood that he made mistakes when he falsified both security clearance applications. (Tr. 41) However, he wanted to move on beyond that mistake, and he committed to honesty and compliance with rules and legal requirements in the future. (Tr. 42)

Applicant's SOR and his April 2011 credit report indicate he had child support accounts placed for collection in the amounts of \$2,652 (SOR ¶ 3.a) and \$4,580 (SOR ¶ 3.b). Applicant's February 2015 credit report shows a child support collection and a monthly payment of \$526. (GE 5) Applicant testified that he is current on his child support responsibility, and that his child support payment is made using a direct payment from income. His child support shortage may have been paid through the Internal Revenue Service (IRS) interception of his income tax refund. (Tr. 52)

Applicant's SOR lists two parking tickets for \$100 each. He said his tickets are paid. Applicant's February 2015 credit report does not include any delinquent accounts for parking tickets. (GE 5)

Applicant's annual salary is about \$72,000, and he has an available monthly remainder of about \$1,000 after paying his expenses. His car payment and a credit card are paid directly from his bank account. Applicant believes all his accounts are current. He puts \$200 monthly into a 401(k) account.

### **Policies**

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## Analysis

### Drug Involvement

AG ¶ 24 articulates the security concern concerning drug involvement:

[u]se 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.

AG ¶ 25 describes three drug-involvement disqualifying conditions that raise a security concern and may be disqualifying in this particular case: "(a) any drug abuse;" "(c) illegal drug possession;" and "(g) any illegal drug use after being granted a security clearance." AG ¶¶ 25(a), 25(c), and 25(g) apply because Applicant has a history of purchasing and using illegal drugs from 1985 to 2013, and he purchased, used, and possessed PCP while holding a security clearance. He disclosed his illegal drug-related behavior during his November 21, 2013 Office of Personnel Management (OPM) interview, in his responses to DOHA interrogatories, in his SOR response, and at his hearing.

AG ¶ 26 provides potentially applicable drug involvement mitigating conditions:

(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;

(4) a signed statement of intent with automatic revocation of clearance for any violation;

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

(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.

Security concerns can be mitigated based on AG ¶ 26(a) by showing that the drug offenses happened so long ago, were so infrequent, or happened under such circumstances that they are unlikely to recur or do not cast doubt on the individual's current reliability, trustworthiness, or good judgment. There are no "bright line" rules for determining when conduct is "recent." The determination must be based "on a careful evaluation of the totality of the record within the parameters set by the directive." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

Applicant frequently purchased and used PCP (he estimated on a weekly basis) from 1985 to May 2013. His security clearance was approved in 2009 and he has retained it through his hearing date. Applicant claimed that he now recognizes the adverse impact on his life of drug abuse. He averred that he will not use illegal drugs in the future. AG ¶ 26(a) partially applies to his illegal drug-related offenses.

Applicant claimed that he has disassociated from his drug-using associates, friends, and contacts; that he has broken his pattern of drug abuse; and that he has changed his lifestyle with respect to illegal drug use. However, he has only abstained from drug abuse for about 24 months and his drug abuse while holding a security clearance is recent. AG ¶ 26(b) partially applies.

AG ¶ 26(c) is not applicable because Applicant did not abuse prescription drugs after being prescribed those drugs for an illness or injury. AG ¶ 26(d) is partially applicable. He satisfactorily completed a drug treatment program; however, he cannot receive full credit because he did not provide a favorable prognosis by a duly qualified medical professional.

Applicant ended his drug-related misconduct in May 2013, about 24 months before his hearing. The motivations to stop using illegal drugs are evident. He understands the adverse results from drug abuse.<sup>2</sup> He has demonstrated some track record of no drug abuse to partially mitigate his drug involvement.

Nevertheless, Applicant illegally purchased and used drugs for a period of 28 years. The security concerns in his case are aggravated by Applicant's drug-related behavior while possessing a security clearance. The passage of time so far is insufficient for me to conclude that Applicant has been fully rehabilitated, that he has made permanent lifestyle changes to prevent any future illegal drug abuse, and for him to demonstrate his ability and willingness to comply with laws, rules, and regulations.

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<sup>2</sup>Approval of a security clearance, potential criminal liability for possession of drugs and adverse health, employment, and personal effects resulting from drug use are among the strong motivations for remaining drug free.

## Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

The SOR alleges two disqualifying conditions under AG ¶ 16:

(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; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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 person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations.

Applicant deliberately failed to disclose his illegal drug-related behavior, and his 1990s and 2007 arrest for DUI—alcohol, on his 2009 SCA. He failed to disclose the same information, and an additional January 2010 arrest for DUI—drugs, on his 2011 SCA. Applicant did not disclose the requested information because he believed it would have drastically affected his chances of being employed. His falsifications were intentional and designed to conceal information from the Government to obtain or retain a security clearance. AG ¶¶ 16(a) and (d) are applicable.

AG ¶ 17 describes seven conditions that could mitigate security concerns including:

(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 improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual

specifically concerning the security clearance process. 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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

For the same reasons discussed above under Guideline H, incorporated herein, none of the mitigating conditions apply. Applicant engaged in a 28-year pattern of illegal drug purchase and use, which continued after he was granted a security clearance in 2009. He deliberately falsified both his 2009 and 2011 SCAs to conceal his illegal drug-related behavior and his criminal record (1990s, 2007, and 2010 arrests and charges). While his disclosure of his history of drug involvement and ending his illegal drug use in 2013 are important positive steps, his falsifications (which constitute felony offenses) raise unresolved questions about his reliability, trustworthiness, and ability to protect classified information. Personal conduct concerns are not mitigated.

## **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in his 2011 credit report, which alleges four debts placed for collection totaling \$7,432. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 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.

Applicant admitted responsibility for and took reasonable actions to resolve his SOR debts. He resolved all four of the collection accounts. He does not have debts that are currently delinquent. His past delinquent debts do not cast doubt on his current reliability, trustworthiness, or good judgment. His finances are under control. He has a \$1,000 monthly remainder available after paying his expenses and debts. Applicant’s conduct in resolving his debts warrants full application of AG ¶¶ 20(a), 20(c), and 20(d). He mitigated the financial considerations security concerns.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines H, E, and F in

my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There is some evidence supporting approval of Applicant's clearance. Applicant is a 44-year-old desktop support engineer, who is an employee of a federal contractor. He disclosed his illegal drug-related behavior during a 2013 background interview, in his responses to DOHA interrogatories, in his SOR response, and at his hearing. His admissions are a positive sign that Applicant is taking responsibility for his drug-related misconduct and falsifications. He stopped using illegal drugs in May 2013, and successfully participated in a drug-treatment program. I am encouraged with Applicant's sincerity and commitment to change, his promise to continue to refrain from using illegal drugs, and his decision to be honest in security matters.

Notwithstanding, the evidence against approval of Applicant's clearance is more substantial. Applicant, 44, has illegally purchased and used drugs during 28 years of his life. He illegally used drugs after possessing a security clearance. He was arrested for DUI—alcohol in 2007, and for DUI-drugs in January 2010, and April 2013. Each time he possessed illegal drugs, he committed both a state and a federal crime. His poor judgment placed himself and others at risk. Moreover, he deliberately falsified his 2009 and 2011 SCAs to cover his illegal drug-related behavior and criminal record.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant failed to mitigate the security concerns pertaining to drug involvement and personal conduct. He mitigated security concerns relating to financial considerations.

### **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
Subparagraphs 1.a through 1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.h:	Against Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraphs 3.a through 3.d:	For 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. Clearance denied.

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JUAN J. RIVERA  
Administrative Judge